

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HUPP

CASE NUMBER

5:16-cv-00370-VAP-SP

PLAINTIFF(S)

v.

SOLERA OAK VALLEY GREENS ASSOCIATION

**NOTICE AND ORDER RE FILING BY
VEXATIOUS LITIGANT**

DEFENDANT(S).

On August 17, 2020, the Court received the attached

☒ Complaint ☐ Petition ☐ Notice of Removal, captioned

☒ other document(s), entitled Ex parte application, cv cover, certificate and notice, motion to disqualify, request for IFP, etc.,

from Paul Hupp, who was found by the Court on 08/16/2016

in case number 5:16-cv-00370-VAP-SP to be a vexatious litigant and/or subject to the following restrictions on the filing of additional documents:

- ☒ A court order or written authorization from a judge must be obtained prior to the filing of document(s).
☒ Submission of document(s) for filing requires a Motion for Leave to File.
☐ Document(s) must be pre-screened by the Court before filing.
☐ Filing fee must be paid.
☐ No further filings are to be accepted in this case from the person named above or anyone acting on his or her behalf.
☐ Bond in the amount of \$ _____ must be posted in order to proceed.
☐ Other :

Pursuant to the terms of the order imposing filing restrictions, the attached document(s) will be forwarded to the

☒ assigned magistrate judge ☒ assigned district judge ☒ Chief Judge for review.

☐ IT IS HEREBY ORDERED that the document(s) presented:

☐ be filed in the above-captioned case.

☐ be filed in case number _____

☐ be filed as a new case.

or

☐ IT IS RECOMMENDED that the document(s) presented not be filed. The Clerk is directed to forward this recommendation to the appropriate district judge for review.

Date

United States Magistrate Judge

IT IS HEREBY ORDERED that the document(s) presented

☒ not be filed.

☐ be filed in the above-captioned case.

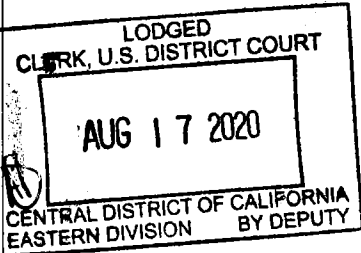
☐ be filed in case number _____

☐ be filed as a new case.

Date

United States District Judge

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S
EMERGENCY *EX PARTE* APPLICATION
PURSUANT TO LOCAL RULE 7-19;
POINTS AND AUTHORITIES;
DECLARATION IN SUPPORT**

Time: 9:00 AM
Date: August 19, 2020
Courtroom:
Judge:

I **Introduction**

To the United States District Court for the Central District of California (“COURT”),
Defendants Rebecca Lynn Dugan (“DUGAN”), John Washburne Vineyard (“VINEYARD”)
Leslie Irene Ryder, A/K/A Leslie Irene Hupp (“RYDER”); Lisa Martinez Shiozaki
 (“SHIOZAKI”); Kellen S. Stevens (“STEVENS”); Dennis M. Sandoval (“SANDOVAL”); De
La Housaye & Associates, A Law Corporation (“DLHA”) and Roes 1-10 (“ROES”) (collectively
 “DEFENDANTS”) and all other parties of interest, pursuant to Local Rule 7-19, Plaintiff Paul

Hupp (“”) HEREBY GIVES Notice of Emergency *Ex Parte* Application and Emergency *Ex Parte* Application to enjoin DEFENDANTS, with specificity on SANDOVAL and RYDER, from taking any further action regarding or concerning the breaching of Fiduciary Duties of Aristea Hupp’s (“AHUPP”) Trust (TRUST”), based on irreparable harm caused to TRUST by DEFENDANTS. Hearing will be held at 9:00 AM in Dept.: , at the United States District Court for the Central District of California, Eastern Division, Riverside, CA, 92501¹.

II

Memorandum of Points and Authorities

This action concerns AHUPP’S TRUST, and the breach of FIDUCIARY DUTY of the *alleged* TRUSTEE and EXECUTOR to do their respective duties. The breaches are causing irreparable harm to TRUST. The number #1 concern currently is the care and well-being the four (4) senior rescue dogs (“SENIOR RESCUE DOGS”) of AHUPP which are now in the care of her son, . took possession of the SENIOR RESCUE DOGS because the TRUST EXECUTOR breached her fiduciary duty to be their “lifetime guardian”. *See* ’S “Complaint”, “Cause of Action Three”: P. 12; ¶¶ 54-57; filed concurrently. One of the SENIOR RESCUE DOGS developed an aggressive cancer and is in need of, and has been in dire need of since July 13, 2020, immediate surgery, costing \$785. *See* attached invoice dated July 13, 2020. Because the TRUSTEE and EXECUTOR have breached their FIDUCIARY DUTY to pay TRUST expense, PHUPP has had to borrow well over \$2,500 to date, and TRUST expenses are in default of over \$5,000 more to date. Neither TRUSTEE nor EXECUTOR have paid a legion of expenses of TRUST since AHUPP passed April 12, 2020, resulting in default and the potential total loss of

¹ As of today the COURT is closed down due to COVID-19 and all parties should expect to participate in the *Ex Parte* Hearing telephonically. Whether appearance is in person or telephonically, the parties will be notified 24 hours in advance by PHUPP on how to appear.

1 value of TRUST if a fire, or other catastrophic event, were to take place; homeowner insurance is
2 but one (1) of the legion of expenses that have defaulted.

3 Currently all three (3) TRUST real properties have homeowner association fees (\$203;
4 \$203; \$200; \$603/month aggregate) that have not been paid in over five (5) months and are in
5 default. All three (3) have had legal notices sent that liens are about to be placed on the real
6 properties. One of the real properties has not had the \$150/month Trust Deed [mortgage] paid in
7 over five (5) months and a "Notice of Foreclosure" has been filed by the lender. The TRUST has
8 had income over this five (5) month period of approximately \$4,100, far more than needed to pay
9 the HOA fees and Trust Deed of all three (3) real properties. The insurance of one real property
10 has expired, on July 15, 2020. If a fire or any other type of harm were to damage or destroy the
11 real property there would be a total loss with no recourse.
12

13 PHUPP is not in a position to "borrow" any more money to pay TRUST expenses that
14 have accumulated during the last five (5) months. This includes water bills that had received a 48
15 hour shutoff notice. Home phone and internet expenses are in default of over \$400 for non-
16 payment, and 'S cellphone was disconnected for non-payment.

17 The SENIOR RESCUE DOGS are most at risk because their life saving surgery/health
18 cannot be paid for. The SENIOR RESCUE DOGS monthly food cost was paid by automatic
19 payment by AHUPP'S credit card, which is now in the possession of TRUSTEE and
20 EXECUTOR, and has been in default since AHUPP passed April 12, 2020, forcing to borrow
21 the costs and expenses to continue to provide for their care. has been able to barely get by the
22 last five (5) months by borrowing money from friends and making the minimum payments to
23 utilities. Such borrowing was o where near the amounts needed to continue basic living expenses
24
25

1 and care for AHUPP'S SENIOR RESCUE DOGS. cellphone was turned off July 13, 2020, due
 2 to four (4) months of non-payment.

3 On May 12, 2020, asked STEVENS and DLHA for an accounting of all expenses
 4 incurred by TRUST since AHUPP passed on April 12, 2020. Neither STEVENS, DLHA,
 5 SANDOVAL, RYDER, or any DEFENDANT, replied in any manner whatsoever. Under
 6 statutory law in CA a TRUSTEE must give an accounting of TRUST assets at least once every
 7 year and upon any change in TRUSTEE. When SANDOVAL was allegedly appointed
 8 TRUSTEE on or around May 5, 2020, was entitled to a full accounting of TRUST assets,
 9 including all income and expense statements under California Probate Code §17200(a)(7)(B):
 10

11 “Except as provided in Section 15800, a trustee or beneficiary of a trust may
 12 petition the court under this chapter concerning the internal affairs of the trust or
to determine the existence of the trust.”

13 “Provide information about the trust under Section 16061 if the trustee has failed
 14 to provide the requested information within 60 days after the beneficiary’s
 15 reasonable written request, and the beneficiary has not received the requested
 information from the trustee within the six months preceding the request.”
 Underline added.

16 DEFENDANTS, including the *alleged* appointed TRUSTEE SANDOVAL, have not
 17 complied with statutory law as outlined *supra*. DEFENDANTS have allowed virtually all of
 18 TRUST accounts and assets to enter into default. This has resulted in completely uncalled for
 19 late fees added to all of the accounts; but far more serious it has placed TRUST assets in a
 20 position of total loss as insurance has not been paid and lapsed; lien notices have been filed or
 21 are in the process of being filed on all three (3) TRUST real properties; a foreclosure notice has
 22 been sent by the lender of one (1) real property. The most harmful irreparable harm is the
 23 lifesaving cancer surgery for one of AHUPP'S SENIOR RESCUE DOGS has been delayed by
 24 more than 30days, placing the SENIOR RESCUE DOG'S entire life in danger.
 25

At hearing will move COURT to: 1) enjoin all DEFENDANTS from having any further association with TRUST without prior court approval; 2) release \$5,000 from TRUST to so can bring all accounts up to date; 3) ORDER RYDER to give his 50% share of AHUPP'S cremated ashes that RYDER took possession of on May 4, 2020; 4) ORDER RYDER to release two (2) of the three (3) "Death Certificates" RYDER took possession of on May 4, 2020; 5) at hearing ORDER any further relief requested that is reasonable.

III **Conclusion**

For the reasons set forth *supra* PHUPP prays that the COURT GRANT 'S Emergency *Ex Parte* Application to cure irreparable harm being caused to: 1) TRUST; 2) AHUPP'S SENIOR RESCUE DOGS; and 3) .

IV **Declaration**

I, **Paul Hupp**, the above-entitled Respondent, declare the following;

1. I have personal knowledge of all statements and exhibits in this declaration.
2. If called upon to testify to this declaration in a court of competent jurisdiction I could and would testify to everything stated herein.
3. All Exhibits attached to or referenced in this brief, are true and correct copies of the originals, which I have in my personal possession. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except for those portions based on information and belief and for those portions I believe them to be true.

Executed August 10, 2020, Beaumont, CA

Respectfully submitted.

Dated this 10th day of August, 2020

/s/ Paul Hupp

Paul Hupp

965 Hidden Oaks Drive

Beaumont, CA. 92223

In Propria Persona

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LOMA LINDA ANIMAL HOSPITAL INC.

2605 S. Waterman Ave. • San Bernardino, CA 92408

(909) 825-3144 • Fax (909) 824-5145

Drs. Office Hours: Mon-Fri 8-12, 2-6 & Sat 8-2

Hospital hours: Monday - Saturday 6:30 AM - 7PM (Sat 6PM)

Emergencies & Sundays Call (909) 825-3144

- Medical Care**
Large Animals by Appointment
Grooming
Boarding
Pet Supplies

CANCER: C**TOTAL****DATE****OFFICE CALLS**

- ☐ Office Call
☐ Office Call Multi-pets
☐ Re-check
☐ Emergency Office Call
☐ Consultation
☐ Health Certificate
☐ Permit
☐ Blood Draw

INJECTIONS

- ☐ Adequan
☐ Allergy
☐ Antibiotic
☐ Antihistamine
☐ Calcium
☐ Hormone
☐ Ivermectin
☐ Vitamin
☐ IV Fluids
☐ SQ Fluids

VACCINATIONS

- ☐ Bordetella
☐ Corona
☐ DHP/P
☐ DHLPP/P+C
☐ FIP
☐ Fe Lv
☐ FVRCP
☐ Influenza
☐ Lyme
☐ Parvo
☐ Rabies
☐ Rattlesnake

WORMING

- ☐ Cats & Dogs up to 10#
☐ Dogs 10.1# & up

MEDICATION DISPENSED**HOSPITALIZATION**

- ☐ Intensive Care
☐ Isolation Care
☐ Nursing Care

PROFESSIONAL SERVICES

- ☐ Anal Sac Expression
☐ Apply Bandage
☐ Artificial Insemination
☐ Ear Cleaning
☐ Enema
☐ Eye Dye/Anesthesia
☐ Eye Schirmer Tear Test
☐ Fine Needle Aspiration
☐ Foxtail Removal
☐ IV Catheter
☐ Physiotherapy
☐ Ultrasound Exam
☐ Urinary Catheter
☐ Whelping Assistance

RADIOLOGY

- ☐ Small Film
☐ Large Film
☐ Barium Series

ANESTHESIA & SEDATION

- ☐ Isoflurane Inhalant
☐ IM Anesthesia
☐ IV Anesthesia
☐ Local Anesthesia
☐ Torbugesic
☐ Tranquilization

SURGERY

- ☐ Castration
☐ Ovariohysterectomy (Spay)

DENTISTRY

- ☐ Extractions
☐ Ultrasonic Cleaning & Polishing

BOARD CERTIFIED SPECIALISTS

- ☐ Consultation
☐ Pathology
☐ Radiology
☐ Surgery

LABORATORY

- ☐ Avian Profile
☐ Biopsy
☐ Brucellosis Test
☐ CBC
☐ Complete Canine Panel
☐ Complete Feline Panel
☐ Culture and Sensitivity
☐ Cytology
☐ Distemper Titer
☐ Fecal Exam
☐ Feline Leukemia Test
☐ FIV Test
☐ Fungal Culture
☐ Glucose
☐ Heartworm Exam
☐ Mammalian Profile
☐ Parvo Fecal
☐ Parvo Titer
☐ Progesterone
☐ Rabies Titer
☐ Skin Scraping
☐ Sperm Count
☐ Thyroid Profile
☐ Urinalysis
☐ Vaginal Smear

PROFESSIONAL GROOMING

- ☐ Bath and Groom
☐ Bath Only
☐ Medicated Bath
☐ Nails

BOARDING

- ☐ Cats & Rabbits
☐ Small Dogs up to 25#
☐ Medium Dogs 26-50#
☐ Large Dogs 51-75#
☐ Extra Large Dogs 76# & up
☐ Birds
☐ Walk

MISCELLANEOUS

- ☐ E & C
☐ Hazardous Waste
☐ Postage & Handling

HOME CARE

Next Appointment _____ Call for Lab Results _____ AM/PM

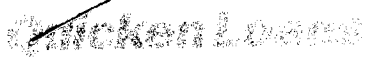
THE CALIFORNIA VETERINARY MEDICINE PRACTICE ACT STATES IN SECTION 2030: "If no after hours emergency care is available, full disclosure shall be provided to the public to rendering services." Staff members and Dr. Sigdestad regularly check animals after business hours. Dr. Sigdestad lives near the clinic and any pet deemed critical will be transported to his residence.

9984 Scripps Ranch Blvd, san Diego CA 92131

Ship To
Same as recipient

We understand the incredible loss you must be experiencing. Please bring this account up to date so we can avoid legal action to protect the interests of the HOA.

Thank you for your business!



Home Loan
Provider of
Charles Schwab Bank

1050 Woodward Avenue | Detroit, MI 48226

Aristea Hupp
965 Hidden Oaks Dr
Beaumont, CA 92223

See Your Payment Options Online At **ROCKET Mortgage** by Quicken Loans

Hi Aristea Hupp,

Your mortgage payment is 39 days or more past due, and your loan is in default. However, we have resources that can help you, whether you've had:

- A financial challenge
- A loss of income
- A serious life event

You don't have to pick up a phone to get a solution.

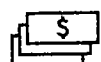
The easiest way to see your options is to print a mortgage assistance application on Rocket Mortgage®. Once we receive your application by mail, we'll collect all the information needed to accurately understand your current situation and find the best solution for you.

If you have other mortgages secured to this property, consider contacting the mortgagees of those mortgages to discuss loss mitigation options.

Sincerely,

Your Account Resolution Team
AccountResolution@QuickenLoans.com

Sign in to Rocket Mortgage® to find the best option based on your unique situation.



Pay Now



Start Your Application



Chat



(800) 279-3005



Solera Oak Valley Greens Association

June 18, 2020

Sent Ground & Certified Mail-RRR

Aristea Hupp
1653 Hibiscus Crt
Beaumont, CA 92223

Re: **Pre-Lien Notification**
Solera Oak Valley Greens Association
1653 Hibiscus Crt, Beaumont, CA 92223
1257057101

Dear Property Owner(s):

This notice is to advise you that we are attempting to collect a debt of assessments as required by the provisions of the **Fair Debt Collection Practices Act**. As such, any information obtained from you will be used for the purpose of collecting said debt. This notice does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

Please be advised you have the right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program as described in Civil Code Section 5900 et. seq., and you have the right to request alternative dispute resolution (ADR) with a neutral third party pursuant to Civil Code Section 5925 et. seq. before the association may initiate foreclosure against your separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

Proudly Managed By
Keystone Pacific Property Management, LLC



1 Von Karman #100
vine, CA 92606
(949) 833-2600

30021 Tomas Road #160
Rancho Santa Margarita, CA 92688
(949) 833-2600

41593 Winchester Road #113
Temecula, CA 92590
93148100117019414916866

3155-D Sedona Court
Ontario, CA 91764
(909) 297-2550

soleraovg.com

Solera Oak Valley Greens Association

Mail-RRR

Solera Oak Valley Greens Association
Beaumont, CA 92223

that we are attempting to collect a debt of assessments as required by the
Collection Practices Act. As such, any information obtained from you will
collecting said debt. This notice does not imply that we are attempting to
who has discharged the debt under the bankruptcy laws of the United States.

Collection Practices Act and the federal Fair Debt Collection Practices
unusual circumstances, collectors may not contact you before 8 a.m. or
grass you by using threats of violence or arrest or by using obscene
use false or misleading statements or call you at work if they know or
may not receive personal calls at work. For the most part, collectors may
than your attorney or spouse, about your debt. Collectors may contact
your location or enforce a judgment. For more information about debt
contact the Federal Trade Commission at 1-877-FTC-HELP or

the right to dispute the assessment debt by submitting a written request for
association pursuant to the association's "meet and confer" program as
on 5900 et. seq., and you have the right to request alternative dispute
ar third party pursuant to Civil Code Section 5925 et. seq. before the
closure against your separate interest, except that binding arbitration shall
intends to initiate a judicial foreclosure.

Proudly Managed By
Keystone Pacific Property Management, LLC

Tomas Road #160
Santa Margarita, CA 92688
(949) 833-2600

41593 Winchester Road #113
Temecula, CA 92590
(951) 491-6866
9314810011702011303809

3155-D Sedona Court
Ontario, CA 91764
(909) 297-2550

soleraovg.com



Named Insured And Risk Address:

Mortgagee:

NONE

Loan Nbr:

Your Producer:

AMERICAN FAMILY CONNECT INS AGCY
800-447-1889

Producer Code: 150830

Payment Plans

24-Hour Automated Policy Information: (800) 447-1889

Your CONDO OWNER Policy is issued to cover the insured and location indicated above. You are shown on our records as the premium payor. If payment is not received by 12:01 a.m. on 07/25/20 you will have no coverage as of this date. Thank you for choosing UNIVERSAL for your insurance needs.

Full Payment	
Amount	Due Date
304.00	07/25/20

***Four Installments**

Amount	Due Date
101.75	07/25/20
76.75	09/23/20
76.75	11/22/20
76.75	01/21/21

***Six Installments**

Amount	Due Date
73.85	07/25/20
54.43	08/29/20
54.43	10/13/20
54.43	11/27/20
54.43	01/11/21
54.43	02/25/21

Premium includes: Fully Earned \$25 policy fee

*A \$7 service charge is included in each installment.

Enroll for AUTOMATIC WITHDRAWAL using your checking account or credit card at www.ArrowheadExchange.com

06/08/20

See reverse side for Coverages, Endorsements, and other details.

PAYMENT COUPON

Make checks payable to: ARROWHEAD GENERAL INSURANCE AGENCY

Named Insured ARISTEA HUPP

Policy Number CCA1002049

Select Payment Plan:

Full Payment	304.00
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*Four Installments	101.75
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*Six Installments	73.85
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Due Date 07/25/20

Write your policy number on the check and return this coupon with your payment or pay online at www.ArrowheadExchange.com

☐ If Change of Mailing Address is required, please check box and enter new information on back of coupon.

ARROWHEAD
EXCHANGE

Pay online TODAY at:
www.ArrowheadExchange.com

Amount Enclosed

\$

UNIVERSAL NORTH AMERICA INS CO
PROCESSING CENTER
P O BOX 9061
CARLSBAD, CA 92018-9061



Beaumont-Cherry Valley Water District
560 Magnolia Ave
Beaumont, CA 92223

~~Disconnection Notice~~

BCD0616A
40000000096 96/1



ARISTEA HUPP
1653 HIBISCUS CT
BEAUMONT CA 92223-8604

RE: Account Number	038902-000
Account Name	Aristea Hupp
Service Location	1653 Hibiscus Ct
Past Due Amount	\$32.01
Additional Charge	\$0.00
Amount Due	\$32.01
Due Date	Tuesday, June 23, 2020

Dear Customer:

06/16/20:

This account has been delinquent for 30 days, as of the date of this notice. To avoid account inactivation, the \$50.00 inactivation charge, and disconnection of service on the sixtieth (60th) day of delinquency, please make your payment of the total Amount Due by 5:00pm on the due date listed above. Any payment received after 5:00pm will be posted to the following business day.

Payments can be received over the phone, via the District's website, by mail, with the onsite drop box, or in person during office hours. The District's office hours are Monday through Thursday, 8:00am until 5:00pm. The District is currently closed on Fridays. The District is not responsible for lost or damaged mail. See reverse side for more information on bill payment options.

In accordance with the District's policies and procedures, your account has been charged a \$5.00 disconnection notice fee for this correspondence.

Should you have any questions or concerns, please feel free to contact the District at (951) 845-9581.

Sincerely,

Utility Billing

Payment Coupon

ACCOUNT INFORMATION

PLEASE RETURN THIS PORTION ALONG WITH YOUR PAYMENT
PLEASE MAKE CHECK PAYABLE TO:

BCVWD

ACCOUNT: 038902-000
SERVICE ADDRESS: 1653 Hibiscus Ct
BILLING DATE: 06/16/2020

DUE DATE: 06/23/2020

ARISTEA HUPP
1653 Hibiscus Ct
Beaumont, CA 92223

AMOUNT DUE

PAST DUE AMOUNT	\$32.01
LATE CHARGE	\$0.00
TOTAL AMOUNT DUE BY	06/23/2020
	\$32.01

AMOUNT ENCLOSED

REMIT PAYMENT TO:



BCVWD
PO BOX 2037
BEAUMONT CA 92223-0937



Beaumont-Cherry Valley Water District
560 Magnolia Ave
Beaumont, CA 92223

MoneyGram

R

connection Notice

ARISTEA HUPP
965 HIDDEN OAKS DR
BEAUMONT CA 92223-8527

RE: Account Number 037172-000
Account Name Aristeia Hupp
Service Location 965 Hidden Oaks Dr
Past Due Amount \$28.51
Additional Charge \$0.00
Amount Due \$28.51
Due Date Tuesday, June 23, 2020

Dear Customer:

06/16/202

This account has been delinquent for 30 days, as of the date of this notice. To avoid account inactivation, the \$50.00 inactivation charge, and disconnection of service on the sixtieth (60th) day of delinquency, please make your payment of the total Amount Due by 5:00pm on the due date listed above. Any payment received after 5:00pm will be posted to the following business day.

Payments can be received over the phone, via the District's website, by mail, with the onsite drop box, or in person during office hours. The District's office hours are Monday through Thursday, 8:00am until 5:00pm. The District is currently closed on Fridays. The District is not responsible for lost or damaged mail. See reverse side for more information on bill payment options.

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Sincerely,

Utility Billing

Payment Coupon

ACCOUNT INFORMATION

PLEASE RETURN THIS PORTION ALONG WITH YOUR PAYMENT
PLEASE MAKE CHECK PAYABLE TO:

BCVWD

ACCOUNT: 037172-000
SERVICE ADDRESS: 965 Hidden Oaks Dr
BILLING DATE: 06/16/2020

DUE DATE: 06/23/2020

ARISTEA HUPP
965 Hidden Oaks Dr
Beaumont, CA 92223

AMOUNT DUE

PAST DUE AMOUNT	\$28.51
LATE CHARGE	\$0.00
TOTAL AMOUNT DUE BY	06/23/2020
	\$28.51

AMOUNT ENCLOSED

REMIT PAYMENT TO:



BCVWD
PO BOX 2037
BEAUMONT CA 92223-0937



037172000000028518

Solera Oak Valley Greens Association

June 16, 2020

—LATE NOTICE—

Aristea Hupp
965 Hidden Oaks Dr
Beaumont, CA 92223

Re: **Late Notice**
Solera Oak Valley Greens Association
965 Hidden Oaks Dr , Beaumont, CA 92223
1257000301

Dear Aristea Hupp,

Our records show an unpaid balance on your account of **\$3395.51**. A late fee of **\$20.30** has been charged to your account based on your Association's delinquency policy. Solera Oak Valley Greens Association relies on your prompt payment of assessments so that it may meet its obligations in a timely manner.

Please forward your payment immediately to avoid further late fees and penalties.

If you have any questions, please call the Accounts Receivable Customer Service Team at (949) 833-2600 or e-mail at customercare@keystonepacific.com.

Sincerely,

For the Board of Directors of
Solera Oak Valley Greens Association

A.R. Customer Service Team

Accounts Receivable Customer Service Team

NEW MAILING ADDRESS FOR PAYMENTS:
C/O Keystone Pacific Property Management, LLC
PO BOX 513380
LOS ANGELES, CA 90051-3380

Proudly Managed By
Keystone Pacific Property Management, LLC

16775 Von Karman #100
Irvine, CA 92606
(949) 833-2600

30021 Tomas Road #160
Rancho Santa Margarita, CA 92688
(949) 833-2600

41593 Winchester Road #113
Temecula, CA 92590
(951) 491-6866

3155-D Sedona Court
Ontario, CA 91764
(909) 297-2550



aristea hupp <ariehupp@gmail.com>

Disconnection of Cellular Service

1 message

DoNotReply@consumercellular.com

<DoNotReply@consumercellular.com>

To: arie hupp@gmail.com

Sat, Jul 11, 2020 at
10:32 AM

SUPPORT

DISCONNECTION OF SERVICE
ACCOUNT #: 103892941

Dear Aristea Hupp,

Your cellular phone account with Consumer Cellular is past due. This has resulted in your service being disconnected as of 07/11/20. The total amount due is \$119.60.

Your account is on our ~~AutoPay~~ service which automatically charges the amount due to your credit or debit card on the invoice due date. We have attempted to process this charge several times but the transactions have been denied. This may be caused by a change in your card (the card number or expiration date) or you may have exceeded the credit card's limit.

Please contact us immediately to verify your credit card information that we have on file and make payment.

- **Update Online:** *My.ConsumerCellular.com*
- **Customer Support:** Call us at (888) 345-5510

Your cellular number is available for approximately 30 days. If you would like to reinstate service after that time, a new cellular number may need to be issued.

We look forward to receiving your payment and getting your service back up and running as quickly as possible. If you have any questions, please give us a call at (888) 345-5510.

Thank you for your prompt response to this matter. We appreciate your business and the opportunity to serve you.

Sincerely,

Consumer Cellular Customer Service



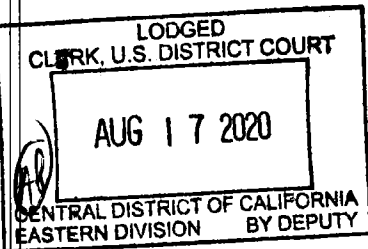
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This message was sent to: ariehupp@gmail.com

Consumer Cellular
12447 SW 69th Avenue
Portland, OR 97223-8517

Communication Code: 40005

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S COMPLAINT
AND DEMAND FOR JURY TRIAL; FOR
TEMPORARY AND PERMANENT
INJUNCTION; FOR DECLARATORY
RELIEF; REMOVAL OF TRUSTEE;
EQUITABLE RELIEF**

COMPLAINT

Plaintiff Paul Hupp ("PHUPP"), in *Propria Persona*, files this Complaint ("COMPLAINT") against Defendants Rebecca Lynn Dugan ("DUGAN"), John Washburne Vineyard ("VINEYARD") Leslie Irene Ryder, A/K/A Leslie Irene Hupp ("RYDER"); Lisa Martinez Shiozaki ("SHIOZAKI"); Kellen S. Stevens ("STEVENS"); Dennis M. Sandoval ("SANDOVAL"); De La Housaye & Associates, A Law Corporation ("DLHA") and Roes 1-10 ("ROES") as follows:

PARTIES, VENUE AND JURISDICTION

1. PHUPP resides and is domiciled within the state of California.
2. DUGAN is employed, resides and is domiciled within the state of California and is a licensed attorney and current Superior Court Judge (SBN#91858).
3. VINEYARD is employed, resides and is domiciled within the state of California and is a licensed attorney and current Superior Court Judge (SBN#144704).
4. DUGAN and VINEYARD are Superior Court judges for the County of Riverside, State of California.
5. RYDER resides and is domiciled within the state of California.
6. SHIOZAKI resides and is domiciled within the state of Utah.
7. STEVENS is employed, resides and is domiciled within the state of California and is a licensed attorney (SBN#320276).
8. SANDOVAL is employed, resides and is domiciled within the state of California and is a licensed attorney (SBN#186922).
9. On information and belief DLHA is a domestic corporation that was founded on August 23, 2000, with the corporate license number C2196623, and is doing business within the state of California. Collette Angela De La Housaye is the sole shareholder and is a licensed attorney (SBN#144218).
10. PHUPP does not know the true names and capacities, whether individual, corporate, associate, or otherwise, of Roes 1-10, inclusive, and therefore sue said Roes under fictional names. PHUPP alleges, upon information and belief, that each named Roe is responsible in some manner for committing the acts upon which this action is based. PHUPP will amend this COMPLAINT to show their true names and capacities if and when the same have been ascertained.

1 11. DUGAN, VINEYARD, RYDER, SHIOZAKI, STEVENS, SANDOVAL, DLHA
2 and ROES collectively are “DEFENDANTS”.

3 12. Riverside County is a body of state government located within the Central
4 District of California for jurisdictional purposes.

5 13. VINEYARD and DUGAN are sued both individually and in their official
6 capacity as Superior Court judges for the County of Riverside.

7 14. DEFENDANTS are sued individually, jointly and jointly and severally.

8 15. This action arises under the United States Constitution, particularly under the
9 provisions of the First and Fourteenth Amendments to the United States
10 Constitution and under the laws of the United States, particularly the Civil Rights
11 Act, Title 42 of the United States Code, Sections 1983 and 1988.

12 16. This court has original jurisdiction of this action under the provisions of Title 28
13 of the United States Code, Section 1343-Civil rights and elective franchise.

14 17. This court has original jurisdiction of this action under the provisions of Title 28
15 of the United States Code, Section 1331-Federal question.

16 18. This court has supplemental jurisdiction of state claims that arise out of the
17 nucleus of operative facts, case, or controversy common to the Plaintiff’s federal
18 claims under the provisions of Title 28 of the United States Code, Section
19 1367(a)-Supplemental Jurisdiction; including general contract and tort law under
20 several provisions of the Cal. Civil Code, including but not limited to; §1572 and
21 § 1714(a) negligence.

22 19. The “The Revocable Trust of Aristeia Hupp” (“TRUST”) of Aristeia Hupp
23 (“AHUPP”) is the primary subject of supplemental jurisdiction of this action.

24 20. This court has venue over this case under the provisions of Title 28 of the
25 United States Code, Section 1391(b) and (c).

1 This reference incorporates the above paragraphs into the following cause of
 2 actions.

3 **FACTUAL ALLEGATIONS**

- 4 21. PHUPP is the primary beneficiary of TRUST. SHIOZAKI agreed to act as
 5 TRUSTEE. RYDER agreed to act as successor TRUSTEE. If for any reason,
 6 except fraud, SHIOZAKI or RYDER declined to act as TRUSTEE they could
 7 appoint a professional TRUSTEE. AHUPP named SHIOZAKI and RYDER as
 8 TRUSTEE and successor TRUSTEE because they are the cousin and sister of
 9 PHUPP and as such could reduce the costs of TRUST administration over a
 10 professional TRUSTEE. RYDER was Executor (“EXECUTOR”) of TRUST.
 11
 12 22. SHIOZAKI and RYDER, as TRUSTEE and EXECUTOR of TRUST owed a
 13 “Fiduciary Duty” (“FIDUCIARY DUTY”) to TRUST.
 14
 15 23. On information and belief, DLHA was the law firm AHUPP hired to set up and
 16 finalize TRUST and STEVENS was the lawyer at DLHA drafting and handling
 17 TRUST.
 18
 19 24. AHUPP passed on April 12, 2020. SHIOZAKI became TRUSTEE. PHUPP
 20 contacted SHIOZAKI on May 4, 2020, regarding TRUST issues that concerned
 21 PHUPP. SHIOZAKI, for the very first time, stated she had no intention of ever
 22 being TRUSTEE, and in fact said she became TRUSTEE as a “favor” to
 23 AHUPP. SHIOZAKI did not work whatsoever as TRUSTEE, and never
 24 intended to despite she agreement to be TRUSTEE. RYDER had accepted
 25 responsibility to be successor TRUSTEE if SHIOZAKI could not continue on as
 TRUSTEE. RYDER refused to ne successor TRUSTEE. Neither SHIOZAKI nor
 RYDER did any TRUSTEE work whatsoever.

- 1 25. PHUPP had arranged a phone call with SHIOZAKI as TRUSTEE and
2 STEVENS, who was representing SHIOZAKI as TRUSTEE, for May 7, 2020.
3 DLHA emailed PHUPP that in addition to SHIOZAKI and STEVENS the sole
4 shareholder and owner of DLHA, “Ms. De La Housaye” would also be
5 participating. PHUPP specifically asked if “Ms. De La Housaye” would be
6 billing TRUST for her time, and if she would be PHUPP did not accept her
7 “participation” in the call as it amounted to double billing. Neither STEVENS
8 nor DLHA replied. The attempt to double bill TRUST caused PHUPP great
9 concern as double billing amounts to self-dealing and unjust enrichment.
- 10 26. On May 5, 2020, SHIOZAKI sent PHUPP an email with the subject matter titled
11 “New Trustee” stating: “Good Afternoon Paul, I spoke with Dennis Sandoval
12 today. He is a Trustee located close to your area that will be appointed to take
13 my place, so I wanted to introduce you to him. He has a lot of experience and I
14 felt really comfortable with him. He is copied in on this email.” PHUPP was
15 shocked at SHIOZAKI’S email, and became more suspicious of the activities of
16 DEFENDANTS and called SHIOZAKI and asked her what she was doing.
17 SHIOZAKI stated she had agreed to be TRUSTEE as a “favor” but never
18 actually intended to be TRUSTEE. SHIOZAKI then stated that SANDOVAL
19 would be taking over. PHUPP asked why SHIOZAKI did not confer with the
20 “appointment” of a new TRUSTEE and SHIOZAKI said she didn’t have to, and
21 that STEVENS instructed SHIOZAKI not to talk with PHUPP at all.
22
- 23 27. RYDER as the successor TRUSTEE refused to become TRUSTEE. SHIOZAKI
24 and RYDER were responsible for SANDOVAL being named TRUSTEE.
25

1 28. SHIOZAKI and RYDER never intended to ever act as TRUSTEE, and never
2 engaged in any TRUSTEE work whatsoever. By agreeing to be TRUSTEE and
3 successor TRUSTEE without ever intending to actually become TRUSTEE
4 SHIOZAKI or RYDER were not "Bonafide TRUSTEE" or "Bonafide Successor
5 TRUSTEE" and neither had legal authority to install any successor TRUSTEE,
6 including SANDOVAL. As SANDOVAL'S "appointment" as TRUSTEE was
7 without legal authority he is not, and cannot act as TRUSTEE in any manner
8 whatsoever.

9
10 29. Concerned about self-dealing and unjust enrichment by DEFENDANTS, on May
11 12, 2020, PHUPP asked STEVENS and DLHA for a full accounting of all
12 expenses billed to TRUST since AHUPP passed on April 12, 2020. Neither
13 STEVENS nor DLHA complied. An accounting of a trust must be made once per
14 year without asking, and an accounting can be demanded of a trust at any time by
15 a beneficiary. A beneficiary has a right to a trust accounting any time a new
16 Trustee is installed, such as SANDOVAL. There has been no accounting of
17 TRUST to PHUPP whatsoever.

18 30. On June 10, 2020, PHUPP notified STEVENS and DLHA that at least 15
19 different vendor accounts of AHUPP'S estate had not been paid, were in default,
20 and were in danger of irreparable harm due to late fees and collection expenses
21 (and liens being placed on TRUST property). There are three (3) real properties
22 in TRUST, and all are in homeowner associations requiring monthly dues of
23 \$606/monthly aggregate (1-\$203; 2-\$203; 3-\$200). STEVENS responded on
24 June 15, 2020, asking PHUPP to contact SANDOVAL. PHUPP does not
25

1 consider SANDOVAL'S "appointment" to TRUSTEE as valid and any
2 communication with SANDOVAL could be viewed as a waiver of PHUPP'S
3 objection to SANDOVAL as TRUSTEE.

4 31. To date no bills have been paid by SANDOVAL, or RYDER as EXECUTOR of
5 TRUST. The water bills for two (2) TRUST real properties were on a 24 hour-
6 shut off notice. All three (3) real properties have been notified by the respective
7 HOA'S that liens are about to be placed on the properties due to non-payment of
8 the HOA fees. At present the HOA fees are \$3,030 minus late fees (5x\$606).

9 32. On May 29, 2020, PHUPP borrowed \$1,200 and paid multiple vendor accounts
10 that were in default, including: two (2) water bills with shut-off notices for
11 TRUST real properties; AHUPP Discover credit card; Spectrum
12 Communications bill; Frontier Communications bill; Chewy's \$100/month dog
13 food bill which was on automatic deposit with AHUPP'S Discover credit card,
14 which is for the care of AHUPP'S four (4) senior rescue dogs of which PHUPP is
15 now the care-giver of. RYDER had contracted with AHUPP to be the guardians-
16 for-life of her four (4) rescue dogs. After AHUPP passed RYDER refused to
17 honor her contract with AHUPP.

18 33. One (1) of the real properties owned by TRUST has a trust deed loan that has not
19 been paid since AHUPP passed April 12, 2020, despite more than \$3,200 in
20 rental income being deposited into AHUPP'S/ TRUST Wells Fargo checking
21 account during the same time period. The lender has sent notification that a
22 foreclosure process is being initiated.
23
24
25

1 34. Numerous other vendor accounts have not been paid by EXECUTOR (RYDER),
2 TRUSTEE, or anyone else and are in default and irreparable harm is being done
3 in the form of clearly avoidable late fees, reconnection fees for utilities, and for
4 legal fees and expenses that can result from lies being placed on the real
5 properties. Two (2) of AHUPP'S senior rescue dogs need medical attention that
6 cannot be provided due to lack of funds.

7 35. To date there have been no funds released from TRUST to PHUPP by
8 EXECUTOR, TRUSTEE or anyone else, despite PHUPP informing STEVENS
9 and DLHA of default/non-payment facts on June 10, 2020.

10 36. The three (3) real properties of TRUST are suffering irreparable harm due to
11 excessive, and 100% avoidable, late fees, lien filings and possible foreclosure
12 actions. AHUPP'S four (4) rescue dogs are suffering irreparable harm for lack of
13 funds to pay for food and to seek medical attention. PHUPP is suffering
14 irreparable harm because he is unable to pay for current living expenses and is
15 borrowing money from friends to pay for expenses of TRUST, including
16 necessary utility expenses.

17 37. AHUPP, and now her estate, is involved in ongoing civil litigation dating
18 to 2015. The California District Court of Appeal ("DCA"), Fourth Appellate
19 District, Division Two, was notified by PHUPP of the situation. The DCA gave
20 the estate until July 10, 2020, to file for intervention if it wished to continue. No
21 one that has legal authority to intervene at this point in time and no party has
22 intervened, including the *alleged* TRUSTEE SANDOVAL, causing irreparable
23 harm to TRUST.
24
25

1 38. DUGAN was the former "Presiding Judge" of the Riverside County Superior
2 Court; 2017-2018.

3 39. VINEYARD is the current "Presiding Judge" of the Riverside County Superior
4 Court; 2019-Present.

5 40. On July 10, 2020, PHUPP filed a Verified Complaint in the Riverside County
6 Superior Court with an accompanying Emergency *Ex Parte* Application for
7 immediate intervention. The Emergency *Ex Parte* Application was not set in the
8 normal 24-48 hour period, but was set 10 days out, for July 20, 2020, in order for
9 the Superior Court (VINEYARD) to review the papers and have adequate time to
10 rule and calendar the Verified Complaint and Emergency *Ex Parte* Application.
11 It was imperative that the Emergency *Ex Parte* Application was heard, and ruled
12 on, by the Court immediately due to the irreparable harm being caused by
13 SANDOVAL, the *alleged* TRUSTEE of TRUST, so: 1) emergency cancer
14 surgery could be performed on one (1) of AHUPP'S senior rescue dogs; 2) have
15 SANDOVAL enjoined from engaging in any future TRUST business; and 3) the
16 immediate transfer of \$5,000 from TRUST to PHUPP so TRUST bills could be
17 paid, all of which were in default by more than three (3) months at the time of
18 filing, on July 10, 2020, and are as of today in default by more than four (4)
19 months.
20

21 41. PHUPP has filed in excess of 10 civil actions in the Riverside County
22 Superior Court between 2017-present and neither DUGAN nor VINEYARD have
23 made any order whatsoever to either GRANT or DENY calendaring PHUPP'S
24 actions.
25

1 42. DUGAN, and later VINEYARD, refused to calendar any of the actions;
2 DUGAN and VINEYARD would not return the actions; DUGAN and
3 VINEYARD refused to state what happened to the actions; DUGAN and
4 VINEYARD refused any status update on the actions; DUGAN and VINEYARD
5 would not rule on the actions in any manner whatsoever. VINEYARD and
6 DUGAN simply allowed them to be “received” by the clerk and that was the end
7 of the actions.

8
9 43. PHUPP, under 28 U.S. Code § 2403(b), hereby alleges that California Code of
10 Civil Procedure §391.7, subdivision (c) (“§391.7”) is unconstitutional “as
11 applied” to PHUPP by DUGAN and VINEYARD. PHUPP, under 28 U.S. Code
12 § 2403(b), further alleges that §391.7 is vague, ambiguous, over broad and is
13 facially unconstitutional.

14 44. On December 5, 2019, DUGAN and VINEYARD, in conspiracy with the
15 Riverside County District Attorney, filed a felony criminal information against
16 PHUPP *alleging* violations of Penal Code §69a “Resisting an Executive Officer”
17 (“§69a”). The *alleged* §69a violation/s were based on a simple statement that if
18 DUGAN and VINEYARD refused to process his applications to file the civil
19 actions he had submitted within 30 days he would go to their home and get a
20 ruling on their front doorstep. The statements were constitutionally protected
21 free speech under the First Amendment; there was no “probable cause” to
22 support the filing of the criminal complaint; any criminal complaint, felony or
23 misdemeanor. *In arguendo*, even if the statements were not constitutionally
24 protected free speech under the First Amendment they were submitted in civil
25

1 litigation and would receive 100% protection from any civil (*or criminal*)
2 proceeding under California Civil Code §47 (“§47”), the “Litigation Privilege”.
3 This reference incorporates the above paragraphs into the following cause of
4 actions.

5 **CAUSE OF ACTION NUMBER ONE (1): BREACH OF FIDUCIARY DUTY**

6 45. DEFENDANTS had a FIDUCIARY DUTY to TRUST.

7 46. DEFENDANTS breached their FIDUCIARY DUTY when SHIOZAKI agreed to
8 be TRUSTEE and RYDER as successor TRUSTEE when in fact neither ever
9 intended to be TRUSTEE.

10 47. DEFENDANTS’ actions were the proximate cause of the breached FIDUCIARY
11 DUTY and resulted in damages to TRUST, and PHUPP as beneficiary.

12 48. DEFENDANTS’ breach of FIDUCIARY DUTY resulted in damages to TRUST,
13 and PHUPP as beneficiary.

14 This reference incorporates the above paragraphs into the following cause of actions.

15 **CAUSE OF ACTION NUMBER TWO (2): FRAUD**

16 49. All DEFENDANTS misrepresented to AHUPP and TRUST that SHIOZAKI
17 agreed and intended to be a “Bonafide TRUSTEE”, and that RYDER agreed and
18 intended to be a “Bonafide Successor TRUSTEE”.
19

20 50. DEFENDANTS knew that neither SHIOZAKI nor RYDER ever intended to
21 actually be TRUSTEE, and in fact both breached their FIDUCIARY DUTY as
22 TRUSTEE within 22 days of AHUPP passing and their appointment.

23 51. DEFENDANTS intended to defraud AHUPP and TRUST by inducing her
24 reliance on DEFENDANTS with falsehoods and misrepresentations of
25

1 compliance as TRUSTEE and Successor TRUSTEE and were the causation of
2 damages.

3 52. AHUPP and TRUST relied on DEFENDANTS fraudulent misrepresentations.

4 53. Severe damages resulted from DEFENDANTS fraudulent misrepresentations,
5 including this lawsuit.

6 This reference incorporates the above paragraphs into the following cause of actions.

7 **CAUSE OF ACTION NUMBER THREE (3): BREACH OF CONTRACT**

8 54. RYDER entered into a contract with AHUPP to be the “GUARDIANS-FOR
9 LIFE” of AHUPP’s four (4) small rescue dogs when AHUPP passed.

10 55. RYDER breached that duty.

11 56. TRUST, AHUPP’S rescue dogs and PHUPP suffered damages as a direct and
12 proximate cause of RYDER’S breach.

13 57. RYDER is responsible for her breach and damages.

14 This reference incorporates the above paragraphs into the following cause of actions.

15 **CAUSE OF ACTION NUMBER FOUR (4): BREACH OF FIDUCIARY DUTY**

16 58. AHUPP wished her body cremated, with her ashes split 50/50 between her two
17 (2) children: PHUPP and RYDER. As EXECUTOR of TRUST RYDER had a
18 FIDUCIARY DUTY to split AHUPP’S ashes as she was instructed. On May 4,
19 2020, two (2) urns with AHUPP ashes, to be split 50/50 between PHUPP and
20 RYDER, were Fed Ex delivered to RYDER. RYDER did not have a legal right
21 to 100% of AHUPP cremated ashes but took possession of them anyway.

22 59. RYDER breached her FIDUCIARY DUTY as EXECUTOR by failing to
23 provide PHUPP 50% of AHUPP cremated ashes.
24
25

1 60. RYDER was the sole and proximate cause of said breach.

2 61. PHUPP suffered damages by RYDER breach of FIDUCIARY DUTY and
3 RYDER is responsible for her breach.

4 This reference incorporates the above paragraphs into the following cause of actions.

5 **CAUSE OF ACTION NUMBER FIVE (5): BREACH OF FIDUCIARY DUTY**

6 62. Copies of AHUPP'S "Death Certificate" were to be given to her two (2)
7 children: PHUPP and RYDER. As EXECUTOR of TRUST RYDER had a
8 FIDUCIARY DUTY to provide PHUPP with HIS copy of AHUPP'S "Death
9 Certificate". On May 4, 2020, three (3) "Death Certificates" were Fed Ex
10 delivered to RYDER. RYDER did not have a legal right to keep all three (3) of
11 AHUPP'S "Death Certificate," but took possession of them anyway.

12 63. RYDER breached her FIDUCIARY DUTY as EXECUTOR by failing to
13 provide PHUPP with a copy of AHUPP'S "Death Certificate".

14 64. RYDER was the sole and proximate cause of said breach.

15 65. PHUPP suffered damages by RYDER breach of FIDUCIARY DUTY and
16 RYDER is responsible for her breach.

17 This reference incorporates the above paragraphs into the following cause of actions.

18 **CAUSE OF ACTION NUMBER SIX (6): UNJUST ENRICHMENT**

19 66. DEFENDANTS have unjustly enriched themselves by double-billing and
20 unlawfully appointing SANDOVAL, a licensed lawyer, as TRUSTEE.
21 DEFENDANTS have further breached their FIDUCIARY DUTY and unjustly
22 enriched themselves by failing to competently perform the duties of TRUSTEE
23 and EXECUTOR.
24
25

1 67. TRUST and PHUPP are suffering damages DEFENDANTS unjust enrichment.

2 68. DEFENDANTS are the proximate cause of damages.

3 This reference incorporates the above paragraphs into the following cause of actions.

4 **CAUSE OF ACTION NUMBER SEVEN (7): DECLARATORY AND**
5 **INJUNCTIVE RELIEF**

6 69. DEFENDANTS, through breach of their FIDUCIARY DUTY, “appointed”
7 SANDOVAL as TRUSTEE. But for such breach SANDOVAL would not have
8 been “appointed” TRUSTEE. DEFENDANTS’ actions since AHUPP passed on
9 April 12, 2020, including SANDOVAL and RYDER, have caused extensive and
10 irreparable harm to TRUST and beneficiary PHUPP.

11 70. PHUPP seeks a declaration that DEFENDANTS breached their FIDUCIARY
12 DUTY and SANDOVALS’ “appointment” was unlawful and order
13 SANDOVAL removed.

14 71. PHUPP seeks a preliminary and permanent injunction enjoining
15 DEFENDANTS, agents, representatives, assignees, successors and all other
16 entities acting in concert with DEFENDANTS from engaging in any further
17 action relating to or concerning TRUST, and that PHUPP be appointed
18 temporary TRUSTEE until PHUPP can secure a permanent TRUSTEE for
19 TRUST.
20

21 72. PHUPP seeks an accounting of all income received by TRUST, and all expenses
22 billed to TRUST, since AHUPP passing on April 12, 2020.

23 73. PHUPP seeks an immediate disbursement from TRUST of \$5,000 to bring all
24 delinquent/defaulted TRUST bills current.

25 This reference incorporates the above paragraphs into the following cause of actions.

**CAUSE OF ACTION NUMBER EIGHT (8): INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

74. The DEFENDANTS in this action engaged in numerous civil wrongs as outlined in this COMPLAINT, including engaging in intentional and reckless conduct. These acts by DEFENDANTS were beyond the bounds of human decency. DEFENDANTS did these acts knowingly, willfully, intentionally and maliciously, with the intent to cause PHUPP severe emotional distress and mental anguish.

75. DEFENDANTS conduct was both extreme and outrageous. Specifically the extreme and outrageous actions of DEFENDANTS; 1) Breach of FIDUCIARY DUTY; 2) RYDER failing to give PHUPP his 50% of his mother's cremated ashes ; 3) failing to pay TRUST bills and incurring unnecessary late fees and lien expenses; 4) forcing PHUPP to borrow money to pay TRUST expenses.

76. As a direct and proximate cause of this extreme and outrageous conduct by DEFENDANTS, stated *supra*, PHUPP suffered extreme emotional and psychological distress. DEFENDANTS' actions also caused embarrassment, humiliation, shame, fright, fear, and grief in PHUPP, and DEFENDANTS actions were more than a reasonable person could endure.

77. PHUPP has suffered severe and extreme emotional and psychological distress.

78. Said illegal actions by DEFENDANTS were unreasonable, performed knowingly, willfully, intentionally, deliberately, with deliberate indifference, maliciously, with gross negligence, callousness, indecency and with reckless disregard and indifference to the laws of the state of California, specifically their breach of FIDUCIARY DUTY.

1 79. Defendants are liable for their malicious actions damaging PHUPP.

2 80. Any contrary explanation offered by DEFENDANTS for their conduct is pretext
3 to shield all DEFENDANTS from liability of their wrongful actions.

4 This reference incorporates the above paragraphs into the following cause of actions.

5 **CAUSE OF ACTION NUMBER NINE (9): BREACH OF FIDUCIARY DUTY**

6 81. On May 12, 2020, in an email to STEVENS and DLHA PHUPP asked for an
7 accounting of TRUST, including all expenses that TRUST had incurred since
8 AHUPP passed on April 12, 2020. As of the filing of this action there has been
9 no accounting of TRUSTEE, including expenses, by DEFENDANTS.

10 82. DEFENDANTS breached their FIDUCIARY DUTY by failing to provide an
11 accounting and expenses.

12 83. DEFENDANTS are the sole and proximate cause of said breach.

13 84. TRUST and PHUPP suffered damages by DEFENDANTS breach of
14 FIDUCIARY DUTY and DEFENDANTS is responsible for said breach.

15 This reference incorporates the above paragraphs into the following cause of actions.

16 **CAUSE OF ACTION NUMBER TEN (10): BREACH OF FIDUCIARY DUTY**

17 85. As EXECUTOR RYDER has a FIDUCIARY DUTY to TRUST. TRUST is the
18 successor to the litigation of Riverside Superior Court case no.: RIC-1512779.
19 Solera Oak Valley Greens Association ("SOLERA") and 10 SOLERA Board of
20 Directors ("BOARD") are named Defendants. As EXECUTOR of TRUST
21 RYDER has a FIDUCIARY DUTY to not take any action that could be
22 detrimental or cause harm to TRUST.
23
24
25

86. RYDER breached her FIDUCIARY DUTY by making multiple detrimental statements about and concerning PHUPP and TRUST to SOLERA and SOLERA BOARD after AHUPP passed on April 12, 2020. These statements have already been used adversely against TRUST in RIC-1512779 litigation.

87. RYDER is the sole and proximate cause of said breach of her FIDUCIARY DUTY to PHUPP and TRUST.

88. PHUPP and TRUST suffered damages by RYDER'S breach of FIDUCIARY DUTY and RYDER is responsible for said breach.

This reference incorporates the above paragraphs into the following cause of actions.

**CAUSE OF ACTION NUMBER ELEVEN (11): VIOLATION OF
CONSTITUTIONALLY PROTECTED RIGHTS**

89. DUGAN and VINEYARD violated PHUPP First Amendment rights, including:

1) denial of access to the Courts; 2) unlawful and criminal retaliation against PHUPP based on PHUPP'S constitutionally protected free speech under the First Amendment.

90. DUGAN and VINEYARD are liable to PHUPP for damages.

91. DUGAN and VINEYARD cannot receive Judicial Immunity" because their felonious actions violated state and federal law.

This reference incorporates the above paragraphs into the following cause of actions.

**CAUSE OF ACTION NUMBER TWELVE (12): DECLARATORY AND
INJUNCTIVE RELIEF AGAINST DUGAN AND VINEYARD; DELCARE §391.7
UNCONSTITUTIONAL AS APPLIED BY DUGAN AND VINEYARD**

92. Declare DUGAN and VINEYARD'S actions of failing to GRANT or DENY PHUPP'S action under §391.7 as unconstitutional and DUGAN and VINEYARD violated PHUPP'S constitutionally protected rights.

93. Declare §391.7 unconstitutional “as applied” by DUGAN and VINEYARD.

94. Enjoin DUGAN and VINEYARD from any and all future unconstitutional actions regarding §391.7 as stated *supra*, whether against PHUPP or any other party.

PRAYER FOR RELIEF

ON THESE ABOVE LISTED GROUNDS, Plaintiff PHUPP prays that this Court GRANT judgment in his favor and against DEFENDANTS as follows;

1. For compensatory, special and general damages according to proof, but exceeding \$1,000,000;
2. For punitive and exemplary damages according to proof;
3. For prejudgment and post judgment interest;
4. All fees, costs and expenses for the bringing of this claim, including but not limited to, all attorney fees and costs if said fees and costs are incurred;
5. For declaratory and injunctive relief against DEFENDANTS, including RYDER, SANDOVAL, STEVENS and DLHA, enjoining them from taking any further actions relating to relating to TRUST;
6. To appoint PHUPP as temporary TRUSTEE for 60 days, or until a new TRUSTEE can be appointed by PHUPP;
7. For damages against DUGAN and VINEYARD for criminally violating PHUPP’S constitutionally protected rights secured by the First Amendment;
8. To declare that DUGAN and VINEYARD violated PHUPP’S constitutionally protected rights secured by the First Amendment by failing to calendar, or return with the reason/s why not calendared, this instant action that was lodged on July 10, 2020, or PHUPP’S multiple previous civil actions (10+)

1 going back to 2017, and prospectively enjoin them from such conduct against
2 PHUPP or any other party;

3 9. To declare that VINEYARD violated PHUPP'S constitutionally protected
4 rights secured by the First Amendment by failing to calendar, or return with
5 the reason/s why not calendared, PHUPP'S Emergency *Ex Parte* Application
6 that was lodged on July 10, 2020, with a hearing date of July 20, 2020;

7 10. All other appropriate legal and equitable relief.

8 **RIGHT TO AMEND**

9 Plaintiff PHUPP hereby expressly reserves the right to amend this action to
10 include any actions arising from discovery and to add in Roe defendants.

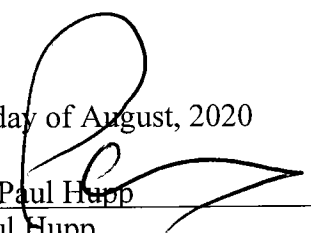
11 **JURY DEMAND**

12 Plaintiff PHUPP requests trial by jury

13 Executed at: Beaumont CA, on August 10, 2020.

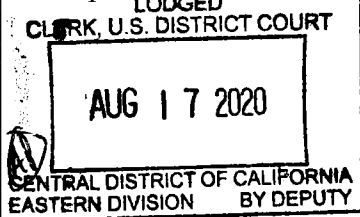
14 Respectfully Submitted.

15 Dated this 10th day of August, 2020

16 
17 /s/ Paul Hupp
18 Paul Hupp
19 965 Hidden Oaks Drive
20 Beaumont, CA. 92223
21 *In Propria Persona*
22
23
24
25

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223

In Propria Persona



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S MOTION TO
DISQUALIFY MAGISTRATE JUDGE
SHERI NICOLE PYM AND DISTRICT
COURT JUDGE VIRGINIA ANNE
PHILLIPS FOR CAUSE; DECLARATION
OF PAUL HUPP IN SUPPORT**

I
Introduction

To the United States District Court for the Central District of California ("COURT"),
Plaintiff Paul Hupp ("PHUPP") HEREBY Files THIS Motion to Disqualify Magistrate Judge
Sheri Nicole Pym (SBN# 175062 ("PYM")) and District Court Judge Virginia Anne Phillips
(SBN# 105237 (PHILLIPS")) *for cause* pursuant to Under 28 U.S.C. §§ 144, 455.

II

Memorandum of Points and Authorities

PHUPP brings this motion based on bias¹ of PYM and PHILLIPS as it relates to a prior ruling declaring PHUPP a “Vexation Litigant” in case EDCV-16-00370 VAP (SP). Under 28 U.S.C. §144, whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding *See* 28 U.S.C. §144; Pesnell v. Arsenault, 543 F.3d 1038, 1043 (9thCir. 2008); U.S. v. Johnson, 610 F.3d 1138, 1147 (9thCir. 2010). Section 144 also provides that “[t]he affidavit shall state the facts and the reasons for the belief that bias and prejudice exists... [and a] party may only file one such affidavit in any case.” *See United States v. Sibla*, 624 F.2d 864, 867 (9thCir. 1980). 28 U.S.C. §144 expressly conditions relief upon the filing of a timely and legally sufficient affidavit/declaration. *Id.* (citing, *inter alia*, United States v. Azhocar, 581 F.2d 735, 738-40 (9thCir. 1978), cert. denied 440 U.S. 907 (1979). “If the judge to whom a timely motion is directed determines that the accompanying affidavit specifically alleges facts stating grounds for recusal under 28 U.S.C. §144, the legal sufficiency of the affidavit has been established, and the motion must be referred to another judge for a determination of its merits.” *Id.* (citing Azhocar, 581 F.2d at 738).

Under 28 U.S.C. §455(a), “Any ... judge ... shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” *See Pesnell* at 1043. 28 U.S.C. § 455(b) provides in relevant part, “...he shall also disqualify himself in the following circumstances:

¹ Under 28 U.S.C. §144, whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. 28 U.S.C. §144 provides the affidavit shall state the facts and the reasons for the belief that bias and prejudice exists. PHUPP has stated such facts of bias.

1 [w]here he has a personal bias or prejudice concerning a party ...” See 28 U.S.C. §455(b)(1). A
 2 motion under § 455 is addressed to, and must be decided by, the judge/s (PYM and PHILLIPS)
 3 whose impartiality is being questioned.” See Bernard v. Coyne, 31 F.3d 842, 843 (9thCir. 1994).
 4 “Section 455 clearly contemplates that decisions with respect to disqualification should be made
 5 by the judge sitting in the case, and not by another judge.” *Id.*, quoting United States v.
 6 Balistreri, 779 F.2d 1191, 1202 (7thCir. 1985). “Section 455 includes no provision for referral
 7 of the question of recusal to another judge; if the judge sitting on the case is aware of grounds for
 8 recusal under section 455, that judge has a duty to recuse himself or herself.” See Sibla, 624 F.2d
 9 at 868. Because “ ...the test for personal bias or prejudice in section 144 is identical to that in
 10 section 455(b)(1) ... a motion properly brought pursuant to section 144 will raise a question
 11 concerning recusal under section 455(b)(1) as well as section 144.” See Sibla, at 867.

13 **PYM and PHILLIPS, in case EDCV-16-00370 VAP (SP), re-litigated a “Vexation**
 14 **Litigant” issue that had already been fully and fairly litigate on the merits, and denied, in a**
 15 **previous civil action less than three (3) short years prior. See Hupp v. San Diego County**
 16 **District Attorney et al, Case No.: 12-cv-492 IEG (RBB), Docket #35, P.2, Footnote 1, dated**
 17 **June 4, 2012. PYM and PHILLIPS simply repeated *allegations* that the Attorney General**
 18 **of California had made in 12-cv-492 IEG (RBB), *identical allegations*, which were DENIED**
 19 **June 4, 2012. Issue and claim preclusion (res judicata and collateral estoppel) prevented**
 20 **PYM and PHILLIPS from getting a “do-over” because they did not like the outcome of**
 21 **Judge Gonzales June 4, 2012, ruling. The most telling factor in PYM and PHILLIPS**
 22 **declaring PHUPP, and his mother Aristeia Hupp (“AHUPP”) as “Vexatious Litigants” in**
 23 **EDCV-16-00370 VAP (SP) is that neither addressed the most relevant and material fact,**
 24 **that the Presiding United States District Court Judge for the Southern District of**
 25

1 **California, Judge Irma E. Gonzalez. Judge Gonzalez refused to make the “finding”**
 2 **requested by the Attorney General, that PHUPP was a “Vexatious Litigant”.** When the
 3 **facts and law do not agree with your argument or ruling it appears that the best thing for**
 4 **PYM and PHILLIPS to do is ignore both, not mention either, and hope it goes away.**

5 These are arguments made previously by PHUPP, on July 14, 2016, in case EDCV-16-
 6 00370 VAP (SP). PHUPP by this reference attaches that brief, and the law and argument in it, for
 7 the requisite showing of **bias** by PYM and PHILLIPS.

8 **III** 9 **Conclusion**

10 For the reasons set forth *supra* PHUPP prays that the COURT GRANT PHUPP’S Motion
 11 to disqualify both PYM and PHILLIPS for cause.

12 **IV** 13 **Declaration**

14 **I, Paul Hupp**, the above-entitled Respondent, declare the following;

- 15 1. I have personal knowledge of all statements and exhibits in this declaration.
- 16 2. If called upon to testify to this declaration in a court of competent jurisdiction I
 17 could and would testify to everything stated herein.
- 18 3. PYM and PHILLIPS declared PHUPP and his mother, AHUPP, “Vexation
 19 Litigants” in case EDCV-16-00370 VAP (SP). AHUPP had only filed four (4)
 20 cases in total in her entire life in Federal Court. PHUPP had filed 33 cases in the
 21 previous 13 years, of which four (4) were related to the State Bar and Magistrate
 22 Judge Rosalyn Merle Chapman (whom PYM ironically replaced) and her
 23 misstatement of the facts; four (4) were in Habeas Corpus actions, three (3) were
 24 related bankruptcy actions, and one (1) related Writ of Coram Nobis in the
 25 Southern District of CA; 12 in total and all of which PHUPP was entitled to file as

1 a matter of law, leaving just 21 various actions in the Southern and Central
 2 Districts of California over a 13 year period. All of which had merit to be filed
 3 because they were all filed under IFP applications, which required approval prior
 4 to filing.

- 5 4. Particularly troubling by PYM and PHILLIPS ruling on their “Vexation Litigants”
 6 OSC in case EDCV-16-00370 VAP (SP) was that it was identical in virtually
 7 every respect to a previous Motion to have PHUPP declared a “Vexation Litigant”
 8 in a prior case in the Southern District of California less than three (3) short years
 9 prior, in Hupp v. San Diego County District Attorney et al, Case No.: 12-cv-492
 10 IEG (RBB), Docket #35, P.2, Footnote 1, dated June 4, 2012. The Attorney
 11 General of California made the identical allegations that PYM and PHILLIPS
 12 made using the exact same cases. The AG’S “Vexation Litigant” Motion was
 13 **DENIED**. Denied by the Presiding United States District Court Judge for the
 14 Southern District of California, Judge Irma E. Gonzalez. Judge Gonzalez refused
 15 to make the “finding” requested by the AG, that PHUPP was a “Vexatious
 16 Litigant”. In fact Judge Gonzalez would not even make the finding that the
 17 statements in the referenced cases are “factually true”. That should have ended
 18 any “Vexatious Litigant” issue on those cases. The issue was DENIED and neither
 19 PYM nor PHILLIPS had standing to overrule the Presiding United States District
 20 Court Judge for the Southern District of California, Judge Gonzalez. Issue
 21 preclusion/collateral estoppel [should have] enjoined PYM and PHILLIPS from
 22 yet again litigating that issue.
 23
 24
 25

- 1 5. PHUPP raised these facts in his opposition to PYM and PHILLIPS “Vexatious
2 Litigant” OSC, and to show that both PYM and PHILLIPS had no case they
3 simply IGNORED that the Presiding United States District Court Judge for the
4 Southern District of California had **DENIED** the issue just a three (3) years prior.
- 5 6. Attached is a true and correct copy of PHUPP’S July 12, 2016, Opposition to
6 PYM and PHILLIPS “Vexatious Litigant” OSC. Even though these issues were
7 the heart of PHUPP’S Opposition, they were not addressed by PYM or
8 PHILLIPS, nor litigated in the appeal following case EDCV-16-00370 VAP (SP);
9 they are therefore ripe for review and are properly before this Court now.

10 Executed August 10, 2020, Beaumont, CA

11 Dated this 10th day of August, 2020

12
13 /s/ Paul Hupp
14 Paul Hupp
15 965 Hidden Oaks Drive
16 Beaumont, CA. 92223
17 *In Propria Persona*
18
19
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24
25

Handwritten: #1

Aristea Hupp
 Paul Hupp
 965 Hidden Oaks Drive
 Beaumont, CA 92223
 951-769-1268
In Propria Persona

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Aristea Hupp,
Paul Hupp
 Plaintiffs,
 v.
Solera Oak Valley Greens Association;
Keystone Pacific Property Management
Inc.;
Dennis Rice;
Richard Crowe;
Judith Paige McWilliams;
Patricia A. King;
Gary Michael Stoh;
Kathy J. Axberg;
John Lee Dorris;
Steven I. Mehlman;
Timothy Taylor;
Samuel Rojas;
Christine Rodgers;
Jack Huntsman;
Kelly Gene Richardson;
Theodore Hyun Dokko;
Jonathan Robert Davis;
Richardson, Harman, Ober PC;
Arthur Kenneth Cunningham;
Stephanie Joy Tanada;
Lewis Brisbios Bisgaard & Smith LLP;
John Devlon Molloy;
Craig Grant Riemer;
Edward T. Webster;
James H. Hamlin;
Roes 1-10,
 Individually, Jointly, Jointly and Severally,

Case No.: EDCV-16-00370 VAP (SP)

**PLAINTIFF'S REPLY TO, AND
 OPPOSITION TO MAY 17, 2016, ORDER
 TO SHOW CAUSE (FILED
 CONCURRENTLY WITH REQUEST FOR
 JUDICIAL NOTICE)**

Date: July 7, 2016
 Time:
 Hon.: Pym
 Dept.: 3 or 4

Defendants.)

I
Introduction

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE SHERI PYM
("PYM"):

Plaintiffs Aristeia Hupp ("AHUPP") and Paul Hupp ("PHUPP" (collectively "Plaintiffs"))
hereby file their reply, and opposition, to the Court's May 17, 2016, Order to Show Cause
("OSC").

II
Memorandum of Points and Authorities

1. "Compilation of Record"

1A. PYM'S OSC Lacking in Both Facts and Law

On May 17, 2016, PYM filed the instant OSC. PYM referenced the instant case and a
prior case that "made identical allegations" in case EDCV-15-1693 VAP (SP). This is patently
incorrect, and the *first of numerous* misstatements of facts *and* law in the PYM'S OSC. Although
many of the prior state allegations were the same, the federal allegations were entirely different.
In addition, there were numerous additional state allegations that were added to the instant action
that were not in the prior action. PYM'S failure to properly state the background facts are
consistent throughout the entire OSC, and buttresses PYM'S bias and misconduct in pursuing the
OSC.

PYM notes that the prior action, and a third (3) action against Solera Oak Valley Greens
Association ("SOLERA") EDCV-14-1303 VAP (SP), was dismissed without leave to amend.
PYM then states that the instant action was "no different" than the prior two (2) and dismissed
without leave to amend. What PYM fails to state, intentionally, is that the instant case is under

1 reconsideration and subject to appeal, as well as case EDCV-14-1303 VAP (SP). Both cases
 2 have valid issues to be considered on appeal.

3 Next PYM references a search of PHUPP on the Public Access to Court Electronic
 4 Records ("PACER") database from 2007. Not from 2003 when PHUPP filed his first federal
 5 complaint, but from 2007. PYM states PHUPP has filed 21 "lawsuits" in the United States
 6 District Court for the Central District of California. Once again PYM misstates both the facts and
 7 the law. Four (4) of the actions filed were *Habeas Corpus Petitions*. *Habeas Corpus Petitions* are
 8 not "lawsuits". Two (2) of the *Habeas Corpus Petitions* were identical as PYM dismissed the
 9 first two (2) *Habeas Corpus Petitions* under the specious claim they could not go forward as the
 10 pending restrictions on PHUPP'S liberty were not present at the time the *Habeas Corpus*
 11 *Petitions* were filed. PYM'S legal analysis was faulty, as it has been numerous times, but to
 12 avoid a long and drawn out appeal that could interfere with the *Habeas Corpus Petitions* PHUPP
 13 refiled both. PYM dismissed both and both are now on appeal to the Ninth Circuit. PYM then
 14 claims that the "majority of Hupp's cases have been dismissed with prejudice, leading Hupp to
 15 refile dismissed claims with either minimal changes or none at all."

17 PYM does not cite to any facts whatsoever to back this statement up except for two (2)
 18 cases, CV-09-2052 and EDCV- 10-413, but both of these cases had already been subject to a
 19 "vexatious litigant" orders. *Both* orders were "narrowly tailored". Maybe even more importantly
 20 is the fact that these cases were six (6) and seven (7) years removed from PYM'S OSC. PYM is
 21 therefore citing to cases that are so far removed from the OSC that one can easily presume that
 22 PYM'S OSC is just *pretext* to stop PHUPP from filing actions against PYM'S; 1) friends, 2) and
 23 people who are politically connected to *both* PMY and United States District Court Judge
 24 Virginia Anne Phillips ("PHILLIPS").
 25

1 PYM then claims that the most “recent filings take a similar pattern”. One again, without
2 going into the law, the facts stated by PYM are 100% wrong.

3 Particularly troubling with PYM’S list of cases is that the exact same “vexatious litigant”
4 motion that PYM is now bringing as an OSC was filed April 27, 2012¹, against PHUPP by
5 Cheryl Brierton, a supervising Deputy Attorney General (“DAG”) for the State of California,
6 before Presiding United States District Court Judge for the Southern District of California, Judge
7 Irma E. Gonzalez. Judge Gonzalez refused to make the “finding” requested by the DAG, that
8 PHUPP was a “vexatious litigant”. In fact Judge Gonzalez would not even make the finding that
9 the statements in the referenced cases are factually true;
10

11 “However, the Court only takes judicial notice of the existence of these documents [court
12 cases cited by DAG to support a finding of “*vexatious litigant*” order] and the statements
13 made in the documents, and not the truth of their contents.” See Hupp v. San Diego
County District Attorney et al, Case No.: 12-cv-492 IEG (RBB), Docket #35, P.2,
Footnote 1, dated June 4, 2012.

14 PYM knows this. More troubling is that these facts have been made to PYM numerous
15 times in the past, as recently as July 7, 2015, and she is on notice and aware of them. See Hupp v.
16 Hubbs et al, PHUPP’S “Omnibus *Ex Parte* Application” dated July 7, 2015.

17 **First**, no SOLERA defendant was named in any of the federal actions in EDCV-14-1303.
18 The only named defendants in that action were Jack Huntsman (“HUNTSMAN”), a City of
19 Beaumont employee, and Christine Rodgers (“RODGERS”), who was named individually and is
20 not an employee of SOLERA. The claims in that action against SOLERA and SOLERA Board
21 members were all state claims, and they had no ruling on the merits whatsoever. The conditions
22 under which HUNTSMAN and RODGERS were dismissed are subject to interpretation and are
23 also subject to appeal. Neither are final rulings on the merits as to the federal actions. As neither
24
25

¹ See Hupp v San Diego County et al, 12-cv-492, Docket #24.

1 HUNTSMAN nor RODGERS are SOLERA “defendants” PYM is factually wrong in claiming
2 that this case was ruled on the merits with regard to SOLERA in any manner whatsoever. This
3 will be a common occurrence by PYM in her “analysis” of both the facts *and* the law.

4 **Second**, the federal action in EDCV 15-1693 was based on the “Fair Credit Reporting
5 Act, 15 U.S.C. §1681 (“FCRA”). The state actions in that case, as in EDCV-14-1303, were never
6 ruled on. There is some issue of disagreement as to whether the FCRA would view SOLERA as
7 a form of “government”. Under California law, the “Davis-Stirling Act”, Common Interest
8 Developments (“CID”), which SOLERA is, are viewed as “governments” and carry many of the
9 exact same duties and powers.

10 **Third**, the federal action in ED CV16-370, the instant action, was likewise not
11 “identical” to either EDCV-14-1303 or EDCV 15-1693. This action was based on violations of
12 the First and Fourteenth Amendments. The Riverside Superior Court has a “blanket ban” on
13 PHUPP from filing any action whatsoever in the state court. This is a clear violating of both the
14 First and Fourteenth Amendments.

15
16 **1B. PYM Has No Legal Authority to Make Any “Vexatious Litigant” Finding of**
17 **Fact for Any Case Prior to June 4, 2012**

18 Presiding United States District Court Judge for the Southern District of California, Judge
19 Irma E. Gonzalez, denied making a finding of fact that PHUPP a “vexatious litigant” on all of
20 the cases cited by PYM prior to June 4, 2012. Those cases are now settled law. Issue and claim
21 preclusion stop PYM from “re-litigating” them a second (2) time, for her own personal vendetta
22 against PHUPP.
23
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PYM is not an appellate court. PYM has no legal authority to over rule a *Presiding Judge*, Judge Gonzalez. Judge Gonzalez' finding of facts and refusal to label PHUPP a "vexatious litigant" is binding on PYM and all other judges.

According to PYM'S OSC "Exhibit B" that leaves a total of 13 cases² in the Central District, starting July 31, 2013, 13-CV-1320 and ending March 1, 2016, the instant case. Of those 13 cases four (4), 33%, are *Habeas Corpus Petitions*, which in reality are really only two (2) *Habeas Corpus Petitions* due to PYM'S rulings, cited *supra*, that the first two (2) could not be filed as the restriction of liberty was not in place when the two (2) were filed. Both are on appeal. One (1) case, EDCV-14-1303 is active/pending. One (1), the instant case, has a pending motion for reconsideration and will be appealed if reconsideration is denied. One (1) EDCV-14-2560³, was the subject of extreme judicial abuse by PYM and PHILLIPS and is also pending appeal. One (1), EDCV-14-1223, was successfully litigated. One (1) case, EDCV-14-576, is pending. Of the 13 cases filed in the Central District since July 31, 2013, 10⁴ (77%) of them have either settled favorably to PHUPP, or are pending appeal.

1C. PYM'S OSC Lacking in Both Facts and Law

As stated *supra*, the three (3) cases PYM claims are "identical"; EDCV-14-1303 (unlawful search in violation of Fourth Amendment against RODGERS), EDCV-15-1693 (FCRA against SOLERA) and EDCV-16-370 (violation of access to the courts and due process

² Hupp v San Diego County et al, 12-cv-492, had one (1) successful action that reached settlement on December 10, 2012; the remaining actions are pending before the Ninth Circuit Court of Appeal. For the purposes of this OSC this case had a favorable conclusion and cannot be used to support PYM'S OSC.

³ This case, Hupp v. Hubbs, was one of the most patently abusive rulings, by PYM, that PHUPP has ever seen in a federal court. Defendant Hubbs, as a private citizen, unlawfully ran a search of PHUPP'S, vehicle through government law enforcement and DMV databases. It was clear PYM either did not understand or know this was unlawful, or more likely did know and under understand such conduct was unlawful but dismissed the case to interfere with PHUPP'S valid, constitutionally protected rights under the First Amendment.

⁴ As two (2) of the *Habeas Corpus Petitions* were refiled and both refiled cases are pending appeal, PHUPP'S position is that all four (4) are pending appeal as they are identical.

under First and Fourteenth Amendments against SOLERA) are not “identical”, nor are they even the same actions, contrary to PYM’S claims in her OSC.

1D. PYM’S OSC Lack Backing by Relevant Law

Also troubling from PYM is her claim that she can issue a “blanket ban” on filing a federal case on not just PHUPP, but also AHUPP. AHUPP has filed a total of four (4) federal lawsuits, of which half are still pending adjudication or appeal. It is such an absurd showing of bias it boggles the mind.

First, there is no question whatsoever that federal courts have the power to make any person subject to a “pre-filing order”, but there are several conditions that must be met and the order must be “narrowly tailored”. In only the most abusive and rarest of cases should a blanket “pre-filing order” be established on any person, and it must be fully documented. *See De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1057 (9th Cir. 2007)⁵. These are extreme remedies and should rarely be used since such sanctions can tread on the litigants constitutionally protected due process rights under the Fifth Amendment. Of course the irony of this OSC is that it revolves around the instant case, which is over a state court blocking access to the courts in the case of PHUPP, and denying due process rights by the state court by holding an *ex parte* hearing and dismissing the subject case of AHUPP; when AHUPP was not noticed, was not served any of the moving papers and was not present to present counter argument at the hearing. A hearing that was held with less than 13

⁵ *Molski* quoted five (5) factors to make a determination for a “vexatious litigant” and the requirement of a “pre-filing order” from a case from United States Court of Appeals for the Second Circuit; *Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir.1986). Those factors are: (1) the litigant’s history of litigation and in particular whether it entailed vexatious, harassing, or duplicative suits; (2) the litigant’s motive in pursuing the litigation, for example, whether the litigant had a good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused unnecessary expense to the parties or placed a needless burden on the courts; and (5) whether other sanctions would be adequate to protect the courts and other parties. These are the factors used in the Ninth Circuit.

1 hours notice to AHUPP. It is truly ironic that PYM and PHILLIPS are having an OSC in this
 2 case under these circumstances. But make no mistake, federal law is diametrically opposite of
 3 state law and Cal. Civ. Pro. Code §391 (“vexatious litigant”). Under *federal* law the criteria to
 4 make a “vexatious litigant” finding is much *narrower*. And the definition of “vexatious litigant”
 5 in *federal* law is likewise much different than under state law Civ. Pro. Code §391. That standard
 6 under *federal* law is much more stringent. Federal courts have that inherent power to sanction
 7 parties for improper conduct. See Chambers v. Nasco Inc., 501 U.S. 32, 43-46 (1991); Roadway
 8 Express, Inc., v. Piper, 447 U.S. 752, 766 (1980); Fink v. Gomez, 239 F.3d 989, 991, (9th Cir.
 9 2001). The “inherent power” of the federal court is discretionary, but does have limits. Fink, at
 10 992 (quoting from Chambers, 50 U.S. at 46-47). However, in order for any federal court to
 11 sanction a person under their “inherent powers” there must be a specific finding of “bad faith or
 12 conduct tantamount to bad faith”. Fink, at 994. Mere “recklessness”, alone, is not enough.
 13 “Recklessness” must be combined with “...an additional factor such as frivolousness,
 14 harassment, or improper purpose”. Fink, at 993-94. In the instant case the sole reason AHUPP
 15 and PHUPP refiled their case from state court in federal court alleging violation of
 16 constitutionally protected rights under the First and Fourteenth Amendments was because of the
 17 conduct of the SOLERA defendants and the state court; refusing to allow PHUPP to litigate a
 18 valid case and then dismissing AHUPP’S case with no notice nor opportunity to be heard. This
 19 was clearly improper, and the fact this court did not even address the issue of PHUPP not being
 20 allowed to be a part of the litigation buttresses Plaintiffs claims that this court is playing politics
 21 in this action. The court’s inherent power *must* be exercised with restraint and caution.
 22 Chambers, 501 U.S. at 44. Once again, noting the differences between *federal* law and Civ. Pro.
 23 Code §391, “litigiousness” alone is insufficient to support a finding of vexatiousness. See Moy v.

1 United States, 906 F.2d 467, 470 (9th Cir. 1990). In the case of AHUPP one can hardly call the
 2 filing of four (4) federal claims, two (2) of which are pending or on appeal, “vexatious”. In the
 3 case of PHUPP one can hardly call the filing of thirteen (13) federal claims, ten (10) of which
 4 ended either favorably, or are pending or on appeal, “vexatious”. Under *federal* law the focus is
 5 not on the number of actions, or whether such actions were adversely decided, the focus is on
 6 whether the *federal* actions that were filed were *frivolous* or *harassing* in nature. In the OSC
 7 PYM has focused solely on the number of actions filed and the outcome. PYM does not analyze
 8 a single case of either Plaintiff, outside of her incorrect analysis of the three (3) cases she claims
 9 were “identical” and involved “Solera”. Under federal law PYM’S OSC lacks substantial factual,
 10 and legal, analysis;

12 “...before a district court issues a pre-filing injunction against a pro se litigant, it is
 13 incumbent on the court to make substantive findings as to the frivolous or harassing
 nature of the litigants actions.” See De Long, 912 F.2d at 1147-48.

14 Here PYM has made no such findings; all PYM has done is make incorrect factual claims
 15 to three (3) cases, just THREE (3), that she claims are “identical”, which is clearly incorrect.

16 Losing a case for failing to exhaust administrative remedies does not demonstrate any
 17 malicious, frivolous or vexatious intent. Nor does losing a case on a summary judgment motion,
 18 or having a *Habeas Corpus Petitions* denied, which PYM’S OSC implies if not out right state it.

19 **1E. PYM Cannot Use Any Papers “Brought to the Court’s Attention”**

20 Also troubling from PYM is her claim that she is using “...relevant portions of Paul
 21 Hupp’s and Aristeia Hupp’ state court litigation”. Just as in the state court action that is the
 22 subject of this federal action, neither AHUPP nor PHUPP, have had any opportunity whatsoever
 23 to address any paper by any defendant that has been filed in this action. Essentially what PYM is
 24 doing is taking, improperly, “judicial notice” of what the various defendants have filed, which
 25

1 neither Plaintiff has any idea as to what PYM is referring to because she makes no citation to her
 2 claim of “relevant portions” of defendants papers. This, as with the OSC and the state court
 3 action of dismissing a case *ex parte* without notice or opportunity to be heard, is unlawful and
 4 violates due process of law. It also show the depths and extent that PYM and PHILLIPS will go
 5 to game the facts and law. The bias of PYM and PHILLIPS is legion.

6 **1F. First, Fifth and Fourteenth Amendment Provides Constitutionally Protected**
 7 **Right of Access to Federal and State Courts**

8 The First and Fourteenth Amendments provide constitutionally protected rights of access
 9 to state courts and due process of law. *See Bounds v Smith*, 430 U.S. 817 (1977). The First and
 10 Fifteenth Amendments do the same for federal courts. The state court denied both PHUPP and
 11 AHUPP these rights. It denied PHUPP’S constitutionally protected rights of access to the courts
 12 and due process of law when the state court judge refused to allow PHUPP to be a co-plaintiff
 13 with AHUPP in the state court action that is the subject of this federal action (case RIC-
 14 1512779). There was no issue in RIC-1512779 that was meritless, frivolous or harassing, and the
 15 state court judge that denied PHUPP the right to be a plaintiff n that action made no finding of
 16 fact whatsoever that it was. The state court judge simply refused to allow PHUPP to be a litigant.
 17 This is a clear violation of constitutionally protected rights of access to the courts and due
 18 process of law. The state court then violated AHUPP’S constitutionally protected rights of access
 19 to the courts and due process of law by dismissing her case, which had been pending since
 20 October 23, 2015, on an *ex parte* motion without notice or opportunity to be heard. Only after
 21 these actions was the instant case filed. And yet again in the court’s order dismissing the instant
 22 action PHILLIPS cites to papers filed by the various defendants to support her dismissal, papers
 23 that cannot receive “judicial notice” without an opportunity to be heard on their validity and
 24 reliability. Then PYM does the exact same thing in this OSC by citing to unidentified and
 25

1 unknown papers from the various defendants without giving Plaintiffs the opportunity to object
 2 to them. In *arguendo*, it is impossible to object when PYM does not even state on the record
 3 what she is citing or referring to.

4 **1G. PYM has Repeatedly Shown Extreme and Severe Bias against Plaintiffs**

5 PYM'S biased against both AHUPP and PHUPP is legion. Her penchant for staying
 6 involved with cases before her while allowing personal friends to be the counsel of record is
 7 equally troubling. And there is no shortage of examples of PYM making favorably rulings for
 8 her personal friends, such Dennis Wagner who represented two (2) defendants in Hupp v. Diaz et
 9 al, EDCV-14-2559 when Wagner filed a 12(b)(6) motion to dismiss without first "meeting and
 10 conferring" with AHUPP under Local Rule (:LR") 73. Despite Wagner clearly violating the LR,
 11 PYM did not dismiss Wagner's motion, and worse she did not sanction Wagner for not
 12 complying with the LR. It was a pattern and practice that PYM would repeat over and over again
 13 to the detriment of AHUPP and PHUPP. In an even more egregious example of PYM
 14 misconduct, in EDCV-14-1303 SOLERA attorney Kelly Richardson would knowingly,
 15 intentionally and willfully send legal papers to the wrong address. The one and only address of
 16 record for AHUPP, and both Plaintiffs, is 965 Hidden Oaks Drive, Beaumont, CA 92223. There
 17 is no other address on any document in this or any other case, in the Clerk's Office or anywhere
 18 else. The address is listed on the face page of every single document filed by Plaintiffs in this
 19 and every other case. The address is listed on the signature block, under BOTH Plaintiffs, of
 20 every single document filed by Plaintiffs in this and every other case. On three different
 21 occasions EDCV-14-1303 SLERA and their attorney of record Kelly Richardson either did not
 22 send their papers or sent them to the wrong address. The first time SOLERA and their law firm
 23 were ORDERED to serve BOTH Plaintiffs at the one and only address of record, 965Hidden
 24
 25

1 Oaks Drive. This was not a new or novel issue. Yet, SOLERA and their law firm repeatedly sent
 2 their papers to the wrong address and Plaintiffs had to continue to file ex parte applications to
 3 have the papers stricken with a request for sanctions or have them served to the correct address.
 4 In addition AHUPP personally delivered a letter to SOLERA'S lawyers on January 26, 2016,
 5 stating, for the fifth (5) time, *in writing*, her address of record was Hidden Oaks Drive. Yet
 6 SOLERA and their law firm continued to either not serve the papers at all or serve them at the
 7 wrong address. Not once did PYM sanction SOLERA and their law firm for their repeated
 8 misconduct. After SOLERA'S eighth (8) act of willful misconduct one would expect PYM to
 9 issue some sort of sanction for the misconduct, but one would be wrong to think that. PYM did
 10 not issue any sanction at any time against SOLERA or their law firm, despite this being the four
 11 (4) *ex parte* applications filed by Plaintiffs to strike and sanction SOLERA and their law firm for
 12 repeatedly engaging the misconduct. Instead PYM tried to justify each and every act of
 13 SOLERA and their law firm's meritless, frivolous and vexatious misconduct by some "excuse".
 14 One excuse was that the "court clerk" did not have the "address of record" in the CM/ECF
 15 system. This was, and is, pure nonsense; all the filed documents had the address of record
 16 clearly on them; in addition to the numerous letters AHUPP personally served on SOLERA and
 17 their law firm stating her address of record. This continued on eight (8) times with SOLERA and
 18 their law firm. Plaintiffs filed motions to strike, and for sanctions, four (4) times. All were
 19 denied.
 20
 21

22 But by far the most telling act of PYM'S misconduct in this series of vexatious and
 23 meritless litigation by SOLERA and their law firm was when PYM fabricated the claim that the
 24 wrong address SOLERA and their law firm were mailing their papers was an "address of
 25 record". PYM fabricated that to protect SOLERA, plain and simple. On March 7, 2016, (Docket

1 #70) in PYM'S "Report and recommendation, PYM made the following, completely fabricated,
2 statement;

3 "On November 20, 2015, plaintiffs filed another ex parte application, this time
4 seeking to strike the Solera defendants' November 13, 2015 reply because plaintiff
5 Aristea Hupp did not receive her own copy of the reply, despite the Solera defendants'
6 proof of service indicating plaintiff **Aristea Hupp was served by mail with the reply at
one of her addresses of record...**". At P.3,L.11-13. Bold, underline added.

7 100% PYM fabrication. AHUPP does not now and has never in the past had any
8 "address of record" except for 965 Hidden Oaks Drive. Yet there it is, **in PYM'S own words,**
9 AHUPP has multiple addresses of record according to PYM. PYM fabricated this falsehood to
10 get the end result she wanted, to support her biased ruling in favor of SOLERA. It should be
11 noted for the record that PYM never forced SOLERA to rectify their misconduct. This was, and
12 is, typical of PYM and her conduct towards both Plaintiffs. PYM'S bias caused substantial harm
13 to Plaintiffs in several ways, including but not limited to; 1) by failing to sanction SOLERA and
14 their law firm for their willful misconduct which encouraged them to continue on with their
15 misconduct; 2) Plaintiffs had to expend substantial time, energy, effort and money to respond to
16 SOLERA and their law firm's misconduct. Plaintiffs had to spend time, energy and resources to
17 keep responding to the meritless, frivolous and vexatious willful misconduct of SOLERA and
18 their law firm's misconduct. This was typical of PYM and her bias against Plaintiffs.

19 **2. "Substantive Findings of Frivolousness"**

20 **2A. Habeas Corpus Petitions**

21 PYM'S bias goes into full swing and spin when she starts off her "Subsection D
22 Substantive Findings of Frivolousness". PYM starts by stating that the 22 cases filed in the
23 Central District are "relatively low". Compared to the 600 "boilerplate" cases filed in Molski, it
24
25

1 is not “relatively low”, but borders on non-existent at 3.6%. In addition the cases filed in Molski
 2 were all identical “boilerplate” complaints;

3 “...boilerplate complaints might indicate an intent to harass defendants.” Molski, at 1059.

4 But PYM is once again wrong in the number of filed cases, as ALL the cases filed before
 5 Presiding Judge Irma Gonzalez of the Southern District had been ruled on by Judge Gonzalez.

6 PYM is not a super appellate court and PYM has not legal authority to over rule or re-litigate the
 7 findings of Judge Irma Gonzalez.

8 PYM’S use of *Habeas Corpus Petitions* are even more specious and outlandish than
 9 PYM’S use of the number cases that have already been litigated. As stated *supra*, of the four (4)
 10 *Habeas Corpus Petitions* in the Central District, they are in actuality only two (2), both of which
 11 PYM made “Report and Recommendations” on to dismiss them. Both are on appeal before the
 12 Ninth Circuit Court of Appeal.

13
 14 **2B. PYM has Not Reviewed ANY Case of PHUPP on the “Merits”**

15 PYM’S bias once again goes unto overtime goes when she claims PHUPP’S;

16 “...Paul Hupp’s individual **civil rights actions under §1983** have been dismissed after
 17 the parties reached settlements. *See ...Paul Hupp v. Rhonda Kuehn Wagner, et al. No. ED*
 18 *CV 14-1223-CAS (PLA), docket nos. 27-28.” Bold added.*

19 Here we have a “Magistrate Judge”, PYM, who is trying to make the claim that PHUPP,
 20 and AHUPP (who only has four (4) cases on record n federal court), are “vexatious litigants”
 21 that should be subjected to a “pre-filing order”, who has not even taken the time to read the
 22 factual background of the small and limited cases filed that can be subject to the “vexatious
 23 litigant” analysis. As stated *supra*, Hupp v. Kuehn is not a;

24 “...civil rights actions under §1983...”
 25

1 It is a diversity case that was brought under 28 U.S.C. §1332. The Kuehn case is listed as
 2 #1 on PYM'S OSC "Exhibit A", and it states the subject matter jurisdiction in the fourth (4)
 3 column, "NOS", as "190". On the United States District Court, Central District of California
 4 Civil Cover Sheet (Form CV-71) under subsection "VIII Nature of Suit "Other Statutes"", "190"
 5 is the code for "Other Contract"; "Civil Rights" actions are listed under code "440". On the
 6 second page, page two (2), ¶10, of the Kuehn Complaint, it clearly states the action is brought;

7 "10. This court has original jurisdiction of this action under the provisions of Title 28 of
 8 the United States Code, **Section 1332-Diversity**. The amount of the aggregated claims
 9 exceeds \$75,000." See Hupp v Kuehn et al, EDCV-14-1223, First Amended Complaint,
 10 page two (2). Bold and underline added.

11 So it is painfully obvious that PYM **has not reviewed, even a cursory review**, the cases
 12 of either PHUPP or AHUPP; PYM has no idea or understanding of even the most basic issues of
 13 the cases; such as subject matter jurisdiction. Yet here PYM is trying to make the claim that
 14 PHUPP'S cases are "frivolous". The only "frivolous" issues from PYM are her OSC and
 15 fabrications of "facts"⁶ in her rulings involving Plaintiffs that are designed to prejudice and
 16 dismiss Plaintiffs actions.

17 **2C. "Patter of Harassment"**

18 PYM'S next claim is that Plaintiffs cases show a "pattern of harassment". Here we have
 19 PYM take "judicial notice" of a state court ruling that PHUPP was determined to be a "vexatious
 20 litigant". As PYM knows from this action, that "vexatious litigant" was based on the rulings of
 21 Judge Gonzalez, which the state court judge just "re-litigated", which is unlawful. State court
 22 judges, like "Magistrate Judges" in federal court, are not super appellate courts that can "re-
 23 litigate" issues already decided. The cases used by the state court judge in making a ruling that
 24 PHUPP was a "vexatious litigant" were the exact same cases that Presiding United States District

25 ⁶ Such as the claim that AHUPP has two (2) "addresses of record."

1 Court Judge for the Southern District of California, Judge Irma E. Gonzalez denied June 4, 2012,
 2 in Case No.: 12-cv-492 IEG (RBB), Docket #35, P.2, Footnote 1. **So now we have a state court**
 3 **judge re-litigating motions that were already denied in federal court, and then PYM taking**
 4 **“judicial notice” of that ruling back in federal court.** For the record, the state court “appeal”
 5 was not denied, because it was never heard. The state District Court of Appeal refused to hear
 6 the case; that is not the same as a “denial”. PYM’S analysis is once again lacking in both facts
 7 and law. And once again, as has happened on at least five (5) different occasions in this case,
 8 both PYM and PHILLIPS have taken “judicial notice” of issues that are subject to dispute and a
 9 violation of Fed. R. Evid. Rule 201. This “pattern and practice” of taking “judicial notice” of
 10 disputed issues is a perfect example of the extreme and intense bias Plaintiffs have been exposed
 11 to under PYM and PHILLIPS.
 12

13 **2D. Improper “Taking of Judicial Notice”**

14 PYM’S improper “taking of judicial notice” in her OSC is legion. PYM has improperly
 15 taken “judicial notice” so many times in this OSC it is mind boggling. This includes a February
 16 10, 2016, “minute order granting ex parte application for dismissal of the first amended
 17 complaint”. This once again shows the PYM bias in full swing and operation. **First**, PYM does
 18 not have legal authority to take “judicial notice” of any issue subject to reasonable dispute.
 19 **Second**, PYM’S taking “judicial notice” of any of the claims made by any defendant, or Judge
 20 Molloy, in the state court action is subject to dispute. In fact this entire action itself revolves
 21 around these disputes. PYM can certainly take “judicial notice” of the fact that these papers are
 22 in the court records, what PYM cannot take “judicial notice” of is the truth, validity or reliability
 23 of these records. In addition the state court case in question is **not final**, and is on appeal; making
 24
 25

PYM'S action all the more specious. This includes all of the "judicial notice" claims by PYM on pages 8-9.

2E. Unlawful use of Civil Contempt Charges

As if all of the above is not enough to show PYM'S bias, PYM shows her ignorance of the law once again by referencing a "civil contempt" conviction in the San Diego County Superior Court. PYM cannot take "judicial notice" of any action that is *not* subject to appellate review, which includes state court civil contempt actions. PYM also seems to have missed the fact that the civil contempt conviction was the result of failure to turn over "exculpatory" fingerprint and DNA evidence. If PYM had performed even a cursory reviewed any of PHUPP'S cases, she would have read the background of the cases in the Southern District that dealt with these issues, in not one (1) but three (3) different cases, 11-cv-2909; 12-cv-492; and 12-cv-274. So now we have PYM not only using tainted state law cases, cases that cannot receive "judicial notice", hut we also have PYM using non-appealable civil contempt state court cases where the government withheld "exculpatory" fingerprint and DNA evidence. PYM'S bias is off the charts.

2F. PYM again "Fabricates" Facts

PYM'S bias is repeated time and again in her OSC. On page 10 of the OSC PYM states that:

"Plaintiffs have also, unsuccessfully, tried to use this court to challenge the decisions and courtroom procedures of Superior Court judges in small claims and infraction cases."

To start, PHUPP has never used this federal court to challenge "...the decisions and courtroom procedures of Superior Court judges in small claims..." AHUPP has, but not PHUPP. PHUPP did bring an action against a state court judge who locked the doors to his public courtroom and prevented PHUPP from defending his case. And yes, "judicial immunity" was used to dismiss both actions. The fact that both cases were dismissed based on "judicial

immunity” in no way makes the cases meritless or frivolous, nor has PYM suggested such; PYM just tosses the cases in to try to support her woefully weak argument that is beset by PYM’S fabricated factual claims.

2G. Habeas Corpus Petitions

PYM then tries to use PHUPP’S four (4) *Habeas Corpus Petitions* as support for her OSC. As stated *supra*, PYM’S use of *Habeas Corpus Petitions* are even more specious and outlandish than PYM’S use of the prior cases that have already been litigated, and denied by Presiding United States District Court Judge, for the Southern District of California, Judge Irma E. Gonzalez, on June 4, 2012, under a previous “vexatious litigant” motion in federal court. As stated *supra*, of the four (4) *Habeas Corpus Petitions* in the Central District, they are in actuality only two (2), both of which PYM made “Report and Recommendations” to dismiss them. Both are on appeal before the Ninth Circuit Court of Appeal. Both are valid. As stated numerous times *supra*, having a *Habeas Corpus Petition* denied is not a factor that can support a “vexatious litigant” finding. PYM knows that, or should know it. And PYM’S dismissal of PHUPP’S *Habeas Corpus Petitions* are on appeal, they are not final and as such have no place in this OSC.

3. “Remaining Molski/Safir Factors”

3A. Number of Actions

PYM’S remaining factors under the Molski/Safir analysis shows bias as well. PYM *admits in her own words* that Plaintiffs filings are “relatively low in number”. Bu then PYM goes on to state that these claims have imposed “substantial costs” on various defendants “many of whom are public entities.” PYM’S use of the term “public entity” in support of her OSC once again shows bias. The question is not whether or not a defendant is a “public entity”, it is whether Plaintiffs have a valid claim. Here the various defendants conspired to calendar and hear

1 an *ex parte* motion to dismiss AHUPP'S claims, without AHUPP: 1) receiving proper notice, 2)
 2 without being served the moving papers; 3) without being present; and 4) without any
 3 opportunity to respond. PYM'S entire OSC is devoid of reason, logic and most importantly legal
 4 authority and support that such a hearing does not violate constitutionally protected rights.

5 **"Pre-Filing Order"**

6 **3B. Pre-Filing Orders Must be "Narrowly Tailored", PYM Wants Blanket Ban**

7 PYM'S OSC is lacking in virtually every aspect of the law. PYM'S use of "judicial
 8 notice" is 100% invalid and a violation of the FRE. PYM'S analysis of the Molski "vexatious
 9 litigant" factors are as far off base as they can get.

10 What PYM has suggested is a BLANKET PRE-FILING ORDER against AHUPP, who
 11 has just four (4) cases in federal court, two (2) of which are under reconsideration or subject to
 12 appeal; and PYM wants a BLANKET BAN on AHUPP from being able to file a federal action.
 13 It is a mind boggling abuse of power from a biased/and/or incompetent magistrate judge. If
 14 anything shows how absurd PYM'S OSC is it is this fact. A blanket ban, or as PYM calls it "pre-
 15 filing order", is not absurd. Given the facts of this case it is one of the most abusive and biased
 16 rulings PHUPP has ever seen in a federal court, and that includes numerous actions from PYM.

17 **4. PYM'S Biased is Well Documented**

18 **4A. PYM and PHILLIP'S Biased Well Documented**

19 PHUPP has documented PYM and PHILLIP'S bias, or incompetence, on numerous
 20 occasions. This includes dismissing a case under a FRCP Rule 56 Motion (by PYM) without
 21 documenting or compiling with the requirements of Rule 56. *See Hupp v Hubbs*, Central District
 22 case no. EDCV-14- 2560 (on appeal).
 23
 24
 25

1 Numerous uses of “judicial notice” in violation of FRE Rule 201, as documented
2 throughout this OSC reply.

3 PYM’S fabrication of “facts” in support of her refusal to sanction various defendants in
4 motions/applications brought by Plaintiffs. This includes the claim that AHUPP has two (2)
5 addresses of record.

6 **4B. PYM’S Refuses to Disqualify Herself When Her Personal Friend, Dennis**
7 **Wagner, is Representing Defendants**

8 PYM is personal friends with Dennis Wagner (“WAGNER”), the lawyer for several
9 defendants in this action and in prior actions before PYM; yet PYM did not recuse herself from
10 hearing the actions despite this patently obvious conflict.

11 In addition PYM refused to Sanction WAGNER when he violated the local rules of
12 procedure. This was an ongoing trait for PYM, as SOLERA repeatedly sent their papers to the
13 wrong address, and even after three (3) applications by Plaintiffs to sanction SOLERA and their
14 lawyers PYM would just keep fabricating reasons not to sanction, including the fabricated lie
15 that AHUPP had two (2) addresses of record.

16 **4C. PYM is Engaging in Ex Parte Communications with Defendants and their**
17 **Lawyers**

18 Plaintiffs are convinced beyond any doubt whatsoever that PYM is engaging in *ex parte*
19 communications with WAGNER and possibly all the lawyers for the various defendants.
20 SOLERA and their law firm made two (2) very public and unwarranted statements that indicated
21 this court would order that AHUPP and PHUPP be declared “vexatious litigants”;
22

23 **“Solera expects that both Hupps will be declared vexatious litigants in the United**
24 **States Courts.”** See accompanying Request for Judicial Notice, Exhibits #1 and #2. Bold
25 added.

1 This statement was posted on a public SOLERA internet cite on June 23, 2016, and again
 2 in a SOLERA magazine, "The Gazette", published and distributed on or around July 1, 2016. A
 3 lawyer with just a scintilla of training knows that one can be held liable for publishing
 4 defamatory, or even "false light", statements. Yet here SOLERRA and their law firm have made
 5 extremely public, defamatory/false light statements. Why would they make such statements?
 6 There is only one (1) possible answer, PYM is engaging in *ex parte* communications with
 7 WAGNER at a minimum, but most likely all the lawyers for the various defendants as we
 8 already know PYM is personal friends with at least WAGNER, but it is likely PYM knows all
 9 the defendant judges.
 10

11 **III** 12 **Conclusion**

13 The misconduct of the PYM is legion. PYM and PHILLIP'S improper use of "judicial
 14 notice" in the order to dismiss and this OSC are wide ranging and extreme. PYM'S failure to
 15 acknowledge that Presiding Judge Irma Gonzalez of the Southern District denied the vast
 16 majority of the cases PYM has used to support her OSC buttresses PYM'S bias, or
 17 incompetence. PYM and PHILLIPS failure to acknowledge that the Riverside Superior Court has
 18 a BLANKET BAN on PHUPP from litigating valid cases is proven by the fact that the KUEHN
 19 case was deemed to be "meritless/frivolous" by the Riverside Superior Court and PHUPP was
 20 denied the right to file it. Yet the KUEHN case had already been litigated on the merits, and won
 21 by PHUPP in federal court, proving up that the Riverside Superior Court is banning PHUPP
 22 from filing valid cases in direct violation of the First and Fourteenth Amendments. And for
 23 PYM'S curiosity, the KUEHN case survived multiple attempts to dismiss. PYM and PHILLIPS
 24 failure to even address the Riverside Superior Court's BLANKET BAN on PHUPP from filing
 25

cases is patently obvious that they are violating PHUPP'S constitutionally protected rights. PYMS fabricated claim that the three (3) recent cases of AHUPP against "SOLERA" are "identical" is facially false.

And last, it is very clear that PYM has not made any substantive inquiry, or even a cursory inquiry, into the cases of PHUPP as evidenced by PYM'S claim that the KUEHN case is a "civil rights case".

The OSC is simply an attempt by PYM and PHILLIPS to try to silence AHUPP and PHUPP'S constitutionally protected rights to: 1) freedom of speech; 2) access to the courts; and 3) the right to due process of law. It is shameful conduct, but it is conduct PHUPP has come to expect of both PYM and PHILLIPS.

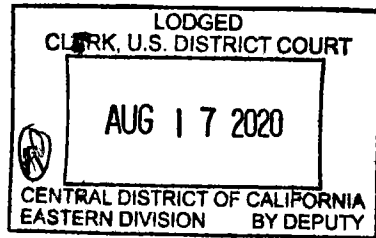
Respectfully submitted.

Dated this 14th day of July, 2016

/s/ Aristeia Hupp
Aristea Hupp
965 Hidden Oaks Drive
Beaumont, CA 92223
951-769-1268
In Propria Persona

/s/ Paul Hupp
Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA 92223
951-769-1268
Paulhupp@Gmail.com
In Propria Persona

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Case No.: CV-20-

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

**PLAINTIFF PAUL HUPP'S REQUEST TO
FILE NEW LITIGATION**

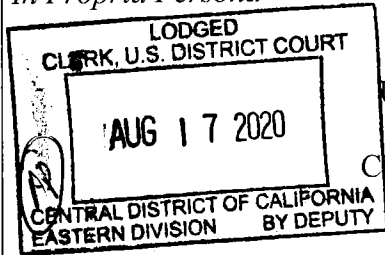
I
Introduction

To the United States District Court for the Central District of California ("COURT"),
Plaintiff Paul Hupp ("PHUPP") HEREBY Files "Request to File New Litigation".

Dated this 10th day of August, 2020

/s/ Paul Hupp
Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S NOTICE OF
MOTION AND MOTION FOR LEAVE OF
COURT TO TEMPORARILY FILE CASE
PAPERS UNDER SEAL; DECLARATION
OF PAUL HUPP IN SUPPORT**

I
Introduction

Plaintiff Paul Hupp ("PHUPP"), in *Propria Persona*, files this Notice of Motion and Motion ("MOTION") for Leave of Court to *temporarily seal* the case documents, including but not limited to case initiating documents, support documents and the Emergency Ex Parte Application documents. And that such documents be filed under seal, and remain under seal, until defendants Rebecca Lynn Dugan ("DUGAN") and John Washburne Vineyard ("VINEYARD") have been served notice.

II Argument

The Court has been filing copies of all civil matters that have been filed since Hupp v Solera Oak Valley Greens Association et al, Case No.: EDCV-16-00370 VAP (SP), into the docket of that case, and notifying the attorneys of record in that case of such docket filings, including Dennis Earl Wagner (SBN# 99190) (“WAGNER”) of the law firm Wagner and Pelayes, LLP¹, the attorney that represented Riverside Superior Court Judges John Devlon Molloy, Craig Grant Riemer and Edward T. Webster. Once WAGNER was notified he in turn would advise his clients, and associates of his clients, who were named defendants. This created a bias against PHUPP because WAGNER and his clients/client associates would then take actions to evade, elude and avoid incriminating actions and misconduct they were predisposed to engage in by cleverness and trickery. That has happened prior, and will likely happen in this action if the initiating papers are not filed under seal. It is also very probable that WAGNER will represent DUGAN and VINEYARD in this matter. Once DUGAN and VINEYARD have been served process the Court can unseal all documents previously filed under seal.

III Conclusion

PHUPP prays the Court GRANT his *temporary* request because the effort to file the papers temporarily under seal is minimal, while the damage to PHUPP that would be created by WAGNER giving advance notice to DUGAN and VINEYARD would/could cause substantial harm to PHUPP and his action.

¹ Wagner is now employed by Wagner Zemming Christensen, LLP.

Declaration

I, **Paul Hupp**, the above-entitled Plaintiff, declare the following;

1. I have personal knowledge of all facts stated herein.
2. If called to testify to these facts I would and could competently testify to such in a court of competent jurisdiction.
3. In previous papers lodged/filed with this Court, copies were placed on the docket of Hupp v Solera Oak Valley Greens Association et al, Case No.: EDCV-16-00370 VAP (SP), and WAGNER was notified.
4. WAGNER in turn would notify his clients at the Riverside Superior Court, and associates of his clients, either directly by himself or indirectly by his clients notifying their associates.
5. Such notifications created a bias against PHUPP because it allowed WAGNER and his clients/client associates to take actions to evade, elude and avoid incriminating actions and misconduct they were predisposed to engage in by cleverness and trickery.
6. DUGAN and VINEYARD are associates of WAGNER clients.
7. Sealing of the record would be *temporary* and would cease once DUGAN and VINEYARD are served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except for those portions based on information and belief and for those portions I believe them to be true.

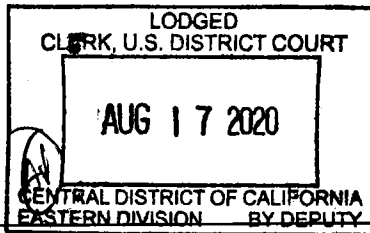
Executed at: Beaumont CA, on August 10, 2020.

Respectfully Submitted.

1 Dated this 10th day of August, 2020

2 /s/ Paul Hupp
3 Paul Hupp
4 965 Hidden Oaks Drive
5 Beaumont, CA. 92223
6 *In Propria Persona*
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Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA 92223



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp

PLAINTIFF/PETITIONER,

v.

Rebecca Lynn Dugan et al
See Attached Facepage

DEFENDANT(S).

CASE NUMBER

20-CV-

**REQUEST TO PROCEED
IN FORMA PAUPERIS WITH
DECLARATION IN SUPPORT**

I, Paul Hupp, declare under penalty of perjury, that the foregoing is true and correct; that I am the petitioner/plaintiff in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefore and that I am entitled to redress.

I further declare under penalty of perjury that the responses which I have made to the questions and instructions below are true, correct and complete.

1. Are you presently employed? ☐ Yes ☒ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. August 8-2010, washed neighbors car, \$25

2. Have you received, *within the past twelve months*, any money from any of the following sources?

- a. Business, profession or form of self-employment? ☐ Yes ☒ No
- b. Rent payments, interest or dividends? ☐ Yes ☒ No
- c. Pensions, annuities or life insurance payments? ☐ Yes ☒ No
- d. Gifts or inheritances? ☐ Yes ☒ No
- e. Any other income (other than listed above)? ☐ Yes ☒ No
- f. Loans? ☒ Yes ☐ No

If the answer to any of the above is yes, describe such source of money and state the amount received from each source during the past twelve (12) months: Borrowed \$1200 from neighbor to pay various (including utility) bills

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts, if applicable.) ☐ Yes ☒ No

If the answer is yes, identify each account and separately state the amount of money held in **each** account for each of the *six (6) months prior* to the date of this declaration.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☒ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

Own 1986 Nissan Truck- \$500

5. In what year did you last file an Income Tax return? 2010

Approximately how much income did your last tax return reflect? \$5,000

6. List the persons who are dependent upon your for support, state your relationship to those persons, and indicate how much you contribute toward their support:

Just myself and my recue animals

I understand that a false statement or answer to any question in this declaration will subject me to penalties for perjury. I further understand that perjury is punishable by a term of imprisonment of up to five (5) years and/or a fine of \$250,000 (18 U.S.C. Sections 1621, 3571).

CA

State

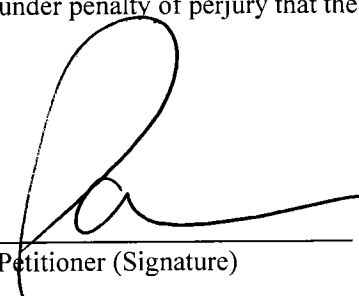
Riverside

County (or City)

I, Paul Hupp, declare under penalty of perjury that the foregoing is true and correct.

8-10-2020

Date


Plaintiff/Petitioner (Signature)

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S
EMERGENCY *EX PARTE* APPLICATION
PURSUANT TO LOCAL RULE 7-19;
POINTS AND AUTHORITIES;
DECLARATION IN SUPPORT**

Time: 9:00 AM
Date: August 19, 2020
Courtroom:
Judge:

I
Introduction

To the United States District Court for the Central District of California (“COURT”),
Defendants Rebecca Lynn Dugan (“DUGAN”), John Washburne Vineyard (“VINEYARD”)
Leslie Irene Ryder, A/K/A Leslie Irene Hupp (“RYDER”); Lisa Martinez Shiozaki
 (“SHIOZAKI”); Kellen S. Stevens (“STEVENS”); Dennis M. Sandoval (“SANDOVAL”); De
La Housaye & Associates, A Law Corporation (“DLHA”) and Roes 1-10 (“ROES”) (collectively
 “DEFENDANTS”) and all other parties of interest, pursuant to Local Rule 7-19, Plaintiff Paul

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Paul Hupp 965 Hidden Oaks Drive Beaumont, CA 92223 (b) County of Residence of First Listed Plaintiff <u>Riverside</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Paul Hupp 965 Hidden Oaks Drive Beaumont, CA 92223	DEFENDANTS Rebecca Lynn Dugan et al See Attached Facepage County of Residence of First Listed Defendant <u>Riverside</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED Attorneys (If Known) UKN
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">Citizen of Another State</td> <td style="width:33%;">Citizen or Subject of a Foreign Country</td> </tr> <tr> <td> <input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3 </td> <td> <input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3 DEF </td> <td> <input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3 DEF </td> </tr> </table>	Citizen of This State	Citizen of Another State	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3	<input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3 DEF	<input type="checkbox"/> 1 PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 3 DEF
Citizen of This State	Citizen of Another State	Citizen or Subject of a Foreign Country					
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IV. NATURE OF SUIT (Place an "X" in One Box Only)				Click here for: Nature of Suit Code Descriptions.	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USC Section 1983</u> Brief description of cause: <u>Violations of, inter alia, First Amendment</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint. JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE 08/10/2020	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG JUDGE _____
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Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
De La Housaye & Associates, A Law
Corporation;
Roes 1-10;
Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

**PLAINTIFF PAUL HUPP'S
EMERGENCY *EX PARTE* APPLICATION
PURSUANT TO LOCAL RULE 7-19;
POINTS AND AUTHORITIES;
DECLARATION IN SUPPORT**

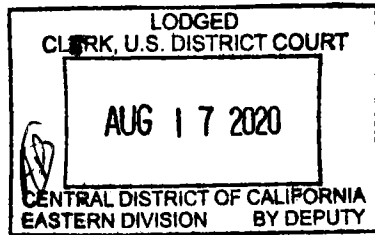
Time: 9:00 AM
Date: August 19, 2020
Courtroom:
Judge:

I
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To the United States District Court for the Central District of California (“COURT”),
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Leslie Irene Ryder, A/K/A Leslie Irene Hupp (“RYDER”); Lisa Martinez Shiozaki
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 “DEFENDANTS”) and all other parties of interest, pursuant to Local Rule 7-19, Plaintiff Paul

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
OR OF PARTY APPEARING IN PRO PER

PPaul Hupp
965 Hidden Oaks Drive
Beaumont, CA 92223



ATTORNEY(S) FOR: Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp

CASE NUMBER:

20-CV-

Plaintiff(s),

v.

Rebecca Lynn Dugan et al
See Attached Facepage

Defendant(s)

CERTIFICATION AND NOTICE
OF INTERESTED PARTIES
(Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for Paul Hupp
or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in
the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification
or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY

CONNECTION / INTEREST

Paul Hupp

Plaintiff

August 10, 2020

Date

/s/Paul Hupp

Signature

Attorney of record for (or name of party appearing in pro per):

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
Lisa Martinez Shiozaki;
Kellen S. Stevens;
Dennis M. Sandoval;
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Individually, Jointly, Jointly and Severally,
Defendants.

Case No.: CV-20-

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La Housaye & Associates, A Law Corporation (“DLHA”) and Roes 1-10 (“ROES”) (collectively
 “DEFENDANTS”) and all other parties of interest, pursuant to Local Rule 7-19, Plaintiff Paul

Signature of Clerk or Deputy Clerk

Paul Hupp
965 Hidden Oaks Drive
Beaumont, CA. 92223
In Propria Persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Paul Hupp,

Plaintiff,

v.

Rebecca Lynn Dugan,
John Washburne Vineyard,
Leslie Irene Ryder, A/K/A Leslie Irene Hupp;
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Kellen S. Stevens;
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Individually, Jointly, Jointly and Severally,
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 ARISTEA HUPP, et al.,
12 Plaintiffs,

13 v.

14 SOLERA OAK VALLEY GREENS
15 ASSOCIATION, et al.,
16 Defendants.

Case No. ED CV 16-370-VAP (SP)

**ORDER DECLARING PLAINTIFFS
PAUL HUPP AND ARISTEA HUPP
TO BE VEXATIOUS LITIGANTS**

17
18 **I.**

19 **INTRODUCTION**

20 On March 1, 2016, pro se plaintiffs Aristeia and Paul Hupp filed a complaint in
21 this case pursuant to 42 U.S.C. § 1983. The 100-page complaint alleges sixty-five
22 claims, including violations of their First and Fourteenth Amendment rights. Among
23 other defendants, the complaint named Solera Oak Valley Greens Association
24 (“Solera”), past and current Solera board members, and Solera residents and
25 employees (collectively, the “Solera defendants”). Solera is a planned, gated
26 community in Beaumont where plaintiff Aristeia Hupp owns two properties and where
27 both plaintiffs reside. Aristeia Hupp is the mother of Paul Hupp.
28

1 Plaintiffs alleged that in April 2015, Solera fined Aristeia Hupp \$200 for walking
2 her dogs without a muzzle in violation of Solera's pit bull muzzle rule, and after
3 plaintiffs indicated their intent to challenge the rule and the fine, Solera shut down
4 plaintiffs' gate remote controls, preventing plaintiffs from entering Solera through any
5 of the resident gates. Docket no. 1 ("Compl.") at 11-12. Instead, plaintiffs must enter
6 through the guest gate, which frequently has numerous cars waiting in line with a
7 waiting period that could exceed thirty minutes. *Id.* at 12.

8 Plaintiffs made identical allegations in an earlier civil rights action filed against
9 various Solera defendants. *See Paul Hupp, et al. v. Solera Oak Valley Greens Ass'n, et*
10 *al.*, No. ED CV 15-1693-VAP (SP), docket no. 1 at 8-10. In a third civil rights action,
11 plaintiffs alleged that in August 2013, Solera and one of its employees conspired with
12 Jack Huntsman, an animal control officer for the City of Beaumont, to violate
13 plaintiffs' civil rights. *See Paul Hupp, et al. v. City of Beaumont, et al.*, No. ED CV
14 14-1303-VAP (SP), docket no. 30 at 5-7, 11-12. Jack Huntsman was also a named
15 defendant in the instant case, and was again accused of conspiring with the Solera
16 defendants and others to violate plaintiffs' civil rights.

17 In both of the previous actions just noted, all of plaintiffs' federal claims against
18 the Solera defendants, both under § 1983 and otherwise, were dismissed without leave
19 to amend for failure to state a viable claim. *See Paul Hupp, et al. v. City of Beaumont,*
20 *et al.*, No. ED CV 14-1303-VAP (SP), docket no. 75; *Paul Hupp, et al. v. Solera Oak*
21 *Valley Greens Ass'n, et al.*, No. ED CV 15-1693-VAP (SP), docket no. 19 at 5-8. This
22 case was no different, with this Court dismissing the entire complaint without leave to
23 amend based on lack of subject matter jurisdiction. Docket no. 50. On June 3, 2016,
24 plaintiffs filed a request for reconsideration (docket no. 54) under Rules 52 and 60 of
25 the Federal Rules of Civil Procedure, which the Court denied on August 5, 2016.
26 Docket no. 68.

27 A search of plaintiff Paul Hupp's name in the Public Access to Court Electronic
28 Records (PACER) database reveals that since 2007, he has filed at least 21 lawsuits in

1 the United States District Court for the Central District of California (sometimes with
2 Aristeia Hupp), in addition to at least 11 lawsuits in the Southern District of California.
3 See Exhibit A. After reviewing these suits, the Court finds Hupp's litigation history in
4 this district demonstrates an abuse of the judicial process and a waste of judicial
5 resources. The overwhelming majority of Hupp's cases have been dismissed with
6 prejudice, leading Hupp to frequently re-file dismissed claims with either minimal
7 changes or none at all. In two of those suits, from 2009 and 2010 respectively, this
8 Court imposed pre-filing screening orders that bar Hupp from filing future suits against
9 any of the defendants in those cases without first obtaining leave of court. See *Paul*
10 *Hupp v. U.S. Dep't of Educ., et al.*, No. CV 09-2052-PA (AGR), docket no. 28; *Paul*
11 *Hupp v. Vicki Kurpinsky, et al.*, No. ED CV 10-413-UA (RC), docket no. 20.

12 With this litigation history in mind, the Court finds Hupp's most recent filings
13 take a similar pattern against various groups of defendants, including the Solera
14 defendants. Accordingly, on May 17, 2016, the Court issued an Order to Show Cause
15 ("OSC") (docket no. 51) why the Court should not declare plaintiffs vexatious
16 litigants. Plaintiffs responded to the OSC ("OSC Response") on July 15, 2016.

17 After careful review and consideration of the OSC Response, and for the reasons
18 outlined below and in the Court's May 17, 2016 OSC, the Court finds it appropriate to
19 declare plaintiffs Paul Hupp and Aristeia Hupp vexatious litigants, and require them to
20 obtain leave of Court before filing any new action.

21 II.

22 DISCUSSION

23 District courts have the inherent power to enter pre-filing orders against
24 vexatious litigants under the All Writs Act. See 28 U.S.C. § 1651(a); *Molski v.*
25 *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). Additionally, Central
26 District of California Local Civil Rule ("Local Rule") 83-8.1 provides: "It is the policy
27 of the Court to discourage vexatious litigation and to provide persons who are
28 subjected to vexatious litigation with security against the costs of defending against

1 such litigation and appropriate orders to control such litigation. It is the intent of this
2 rule to augment the inherent power of the Court to control vexatious litigation and
3 nothing in this rule shall be construed to limit the Court's inherent power in that
4 regard."

5 Where a litigant has "abused the Court's process and is likely to continue such
6 abuse," the court may (1) "order a party to give security . . . to secure the payment of
7 any costs, sanctions or other amounts which may be awarded against a vexatious
8 litigant"; or (2) "make such other orders as are appropriate to control the conduct of the
9 vexatious litigation." Local Rules 83-8.2, 83-8.3. "Such orders may include, without
10 limitation, a directive to the Clerk not to accept further filings from the litigant without
11 payment of normal filing fees and/or without written authorization from a judge of the
12 Court or a Magistrate Judge, issued upon such showing of the evidence supporting the
13 claim as the judge may require." Local Rule 83-8.2.

14 The Ninth Circuit has cautioned, however, that "such pre-filing orders are an
15 extreme remedy that should rarely be used" because of the danger of "tread[ing] on a
16 litigant's due process right of access to the courts." *Molski*, 500 F.3d at 1057.
17 Nevertheless, such pre-filing orders are sometimes appropriate because "[f]lagrant
18 abuse of the judicial power . . . enables one person to preempt the use of judicial time
19 that properly could be used to consider the meritorious claims of other litigants." *De*
20 *Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

21 In *De Long*, the Ninth Circuit set forth the requirements for entering pre-filing
22 orders against vexatious litigants: (1) the litigant must be given notice and opportunity
23 to be heard before the order is entered; (2) the court must compile an adequate record
24 for review; (3) the court must make substantive findings that the litigant's filings are
25 frivolous or harassing; and (4) the pre-filing order may not be overly broad, and must
26 be "narrowly tailored to closely fit the specific vice encountered." *Id.* at 1147-48;
27 accord *Molski*, 500 F.3d at 1057.

28 In its May 17, 2016 OSC, the Court discussed at length the four *De Long* factors

1 and plaintiffs' abuse of the judicial process. OSC at 4-14. The Court repeats much of
2 this analysis here. In addition, to the extent plaintiffs' OSC Response articulates
3 purported bases for the Court to reconsider the findings made in the OSC (as opposed
4 to plaintiffs simply repeating many of the allegations the Court determined were
5 insufficient to assert a federal claim in the underlying complaint in this case), the Court
6 discusses such arguments below.

7 **A. Notice and Opportunity to be Heard**

8 On May 17, 2016, the Court issued an OSC: (1) informing plaintiffs the Court
9 was considering a vexatious litigant order; (2) discussing the legal and factual bases for
10 such order; (3) describing the potential restrictions for future filings if plaintiffs were
11 deemed vexatious litigants; (4) identifying the previous actions filed by plaintiffs; and
12 (5) requiring a response from plaintiffs within three weeks of the Court's OSC. After
13 the Court granted plaintiffs two extensions of time, plaintiffs filed their OSC Response
14 on July 15, 2016. *See* docket nos. 55, 64. As such, plaintiffs were provided with
15 adequate notice and an opportunity to be heard in writing. *See Pac. Harbor Capital,*
16 *Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (holding that an
17 opportunity to brief in writing the issue of sanctions to be imposed on an attorney
18 "fully satisfies due process requirements"); *see also Molski*, 500 F.3d at 1058-59
19 (citing *Pac. Harbor* with approval). In their OSC Response, plaintiffs do not contest
20 the notice and opportunity to be heard provided by the Court's May 17, 2016 OSC.

21 **B. Compilation of Adequate Record for Review**

22 "An adequate record for review should include a listing of all the cases and
23 motions that led the district court to conclude that a vexatious litigant order was
24 needed." *De Long*, 912 F.2d at 1147. "At the least, the record needs to show, in some
25 manner, that the litigant's activities were numerous or abusive." *Id.* Accordingly, the
26 second *De Long* factor requires only that the court compile a list of actions and filings
27 by the litigant. *See Hurt v. All Sweepstakes Contests*, 2013 WL 144047, at *5, (N.D.
28 Cal. Jan. 11, 2013) (finding the second *De Long* factor satisfied where the court

1 “compiled a list of all the actions Plaintiff filed”); *see also Ringgold-Lockhart v. Cty.*
2 *of Los Angeles*, 761 F.3d 1057, 1063-64 (9th Cir. 2014). In *Ringgold-Lockhart*, the
3 Ninth Circuit vacated the district court’s pre-filing order on other grounds, but found
4 the district court’s record met the second *De Long* factor’s requirements in part
5 because the district court “discussed and explained the litigation history leading to its
6 order, and appended a list of twenty-one district court filings, including motions, that it
7 viewed as supporting its order.” *Id.* at 1063.

8 In addition, the Ninth Circuit in *Ringgold-Lockhart* acknowledged that the
9 district court noted the litigant’s extensive history of state court litigation in the body
10 of its order, and cited to a California Court of Appeal decision that discussed that
11 history and declared the litigant to be vexatious under California Code of Civil
12 Procedure § 391(b)(3). *Id.* at 1064. The Ninth Circuit held that “[t]ogether, the list of
13 federal cases, allegedly baseless motions, and the district court’s reference to the
14 California Court of Appeal’s reasoned decision . . . provide an adequate record for this
15 Court to review the merits of the district court’s order.”). *Id.*

16 In the OSC, the Court attached the search results of plaintiff Paul Hupp’s name
17 in the PACER database, revealing at least 21 actions filed in the Central District of
18 California and 11 actions filed in the Southern District of California (Exhibit A), as
19 well as a more descriptive list of 22 actions filed by plaintiffs – either separately or
20 together – in the Central District of California since 2007, indicating the date filed,
21 case number, case title, and reason for termination of those actions (Exhibit B). These
22 Exhibits A and B are also attached hereto, with Exhibit B updated to reflect a more
23 recent case disposition. The OSC additionally discussed relevant portions of Paul
24 Hupp’s and Aristeia Hupp’s state court litigation, as brought to the Court’s attention by
25 various defendants in the instant action, and this litigation history is discussed further
26 below as part of the Court’s analysis of the third *De Long* factor. *See* OSC at 8-11.
27 The Court takes judicial notice of the court records from these other proceedings. *See*
28 *Fed. R. Evid.* 201; *see also Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002)

1 (taking judicial notice of opinion and briefs filed in another proceeding); *U.S. ex rel.*
2 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.
3 1992) (courts “may take notice of proceedings in other courts, both within and without
4 the federal judicial system, if those proceedings have a direct relation to matters at
5 issue” (citation omitted)).

6 As discussed in more detail with regard to the third *De Long* factor, plaintiffs’
7 actions are not only numerous, but the large majority of them have been found to be
8 patently without merit and indicate a pattern of harassment against various defendants.
9 See OSC at 6-7. The second *De Long* factor requiring compilation of an adequate
10 record thus has been met.

11 **C. Substantive Findings of Frivolousness**

12 The Court’s substantive findings regarding the nature of plaintiffs’ filings “go[]
13 to the heart of the vexatious litigant analysis.” *Molski*, 500 F.3d at 1059. To decide
14 whether a litigant’s actions are frivolous or harassing, a court must “look at both the
15 number and content of the filings as indicia of the frivolousness of the litigant’s
16 claims.” *Stimac v. Weikin*, 785 F. Supp. 2d 847, 854 (N.D. Cal. 2011) (quoting *Molski*,
17 500 F.3d at 1058) (internal quotation marks omitted). Thus, a pre-filing order requires
18 not only a showing of litigiousness, but also claims that are meritless. A litigant’s
19 claims “must not only be numerous, but also be patently without merit.” *Molski*, 500
20 F.3d at 1059 (quoting *Moy v. U.S.*, 906 F.2d 467, 470 (9th Cir. 1990) (internal
21 quotation marks omitted).

22 Here, plaintiffs’ previous filings are both numerous and meritless. See Exhibits
23 A-B. As noted in the Court’s OSC, in this district since 2007, plaintiffs have filed 18
24 civil complaints, and Paul Hupp has filed four petitions for writs of habeas corpus
25 under 28 U.S.C. § 2254. OSC at 6; Exhibit B. Five of the cases were terminated at the
26 outset when plaintiff’s application to proceed in forma pauperis was denied. Eight
27 civil actions were dismissed either with prejudice or without leave to amend (none of
28 these eight involved settlements). All four of Paul Hupp’s habeas petitions have been

1 denied for lack of jurisdiction. Of plaintiffs' two still pending cases, one has a pending
2 motion to dismiss, and the majority of the second was recently dismissed. On the
3 whole, the Court's review of those cases reveals conclusory statements and factual
4 allegations repeated across multiple complaints, despite the Court granting several
5 opportunities to amend. These complaints often contain generic and broad references
6 to constitutional harms in order to invoke the Court's jurisdiction over plaintiffs'
7 challenges to various California statutes that are also largely unsupported by the facts
8 alleged.

9 The 22 cases filed by plaintiffs in this district is a relatively low number
10 compared to some other cases where litigants were found vexatious. *See De Long*, 912
11 F.2d at 1147 (citing cases involving 35, "over 50," and "over 600" actions). But the
12 number of lawsuits filed by the litigant need not be numerous. *See Boustred v. Gov't*,
13 2008 WL 4287570, at *2 (N.D. Cal. Sept. 17, 2008) (finding "plaintiff has now
14 brought three actions containing similar rambling, largely incomprehensible claims
15 against a multitude of defendants" sufficient in terms of finding an adequate record for
16 review). Moreover, as discussed further below, the 22 cases filed in this district are in
17 addition to those filed by plaintiffs in other courts. In combination, all these cases
18 form a pattern of harassment.

19 The Court recognizes that two of Paul Hupp's individual civil actions filed in
20 this district have been dismissed after the parties reached settlements. *See Paul Hupp*
21 *v. City of Beaumont, et al.*, No. ED CV 11-774-VAP (SP), docket nos. 27-28; *Paul*
22 *Hupp v. Rhonda Wagner Kuehn, et al.*, No. ED CV 14-1223-CAS (PLA), docket nos.
23 27-28.¹ Paul Hupp was also awarded costs and damages as to a cause of action for
24 libel in 2010. *See Paul Hupp v. Keith D. Jones, et al.*, No. CV 08-6927-GW (SS),
25

26 ¹ As plaintiffs point out in their OSC Response, the OSC incorrectly described
27 *Hupp v. Kuehn*, No. ED CV 14-1223, as a civil rights case, when in fact it was a case
28 alleging breach of contract, fraud, infliction of emotional distress, and defamation.
Hupp v. City of Beaumont, No. ED CV 11-774, was a civil rights case.

1 docket no. 68. The Court also notes that although the majority of one of plaintiffs'
2 cases was recently dismissed, in that case one claim for violation of Paul Hupp's
3 Fourth Amendment rights, brought against Jack Huntsman, an animal control officer
4 for the City of Beaumont, survived a motion to dismiss. *See Paul Hupp, et al. v. City*
5 *of Beaumont, et al.*, No. ED CV 14-1303-VAP (SP), docket nos. 70 at 18-22, 75.

6 But even if these developments could lead to an inference that at least some of
7 plaintiffs' claims have had merit, thus precluding a finding of frivolousness, the Court
8 finds plaintiffs' filings still satisfy the third *De Long* factor here. "Frivolous litigation
9 is not limited to cases in which a legal claim is entirely without merit." *Molski*, 500
10 F.3d at 1060. In *Molski*, the subject of the vexatious litigant order was a disabled
11 patron who filed almost 400 cases against various restaurants and businesses under
12 Title III of the Americans With Disabilities Act, often successfully obtaining cash
13 settlements. *Id.* Nonetheless, the Ninth Circuit upheld the district court's vexatious
14 litigant order, finding the patron's "litigation strategy evidenced an intent to harass
15 businesses," even though his claims for damages "might have been legally justified."
16 *Id.*

17 Indeed, "an alternative to the finding of frivolousness is the finding that [the
18 litigant's] claims show a pattern of harassment." *De Long*, 912 F.2d at 1148. Certain
19 of the factors adopted by the Second Circuit in *Safir v. U.S. Lines, Inc.*, 792 F.2d 19
20 (2d Cir. 1986), which the Ninth Circuit has found provide "a helpful framework" for
21 applying the third and fourth *De Long* factors, are instructive here. *See Molski*, 500
22 F.3d at 1058 (citation omitted). The five *Safir* factors are:

23 (1) the litigant's history of litigation and in particular whether it entailed
24 vexatious, harassing, or duplicative suits; (2) the litigant's motive in
25 pursuing the litigation, e.g., does the litigant have an objective good faith
26 expectation of prevailing?; (3) whether the litigant is represented by
27 counsel; (4) whether the litigant has caused needless expense to other
28 parties or has posed an unnecessary burden on the courts and their

1 personnel; and (5) whether other sanctions would be adequate to protect
2 the courts and other parties.

3 *Id.* (quoting *Safir*, 792 F.2d at 24). Applying that framework to the record before it,
4 the Court concludes the third *De Long* factor is satisfied in light of Paul Hupp's
5 particular pattern of vexatiousness and willful disregard for court rulings.

6 **1. Paul Hupp's History as a Vexatious Litigant**

7 Most relevant here is the first *Safir* factor. In the instant action, various
8 defendants provided the Court with a sampling drawn from Paul Hupp's history of
9 state court litigation that creates a record similar to that in *Ringgold-Lockhart*, where
10 the litigant had also developed an extensive and harassing history of litigation in state
11 court. *See Ringgold-Lockhart*, 761 F.3d at 1064. On March 25, 2016, various Solera
12 defendants filed a motion to dismiss plaintiffs' complaint. Docket no. 37. In support
13 of the motion, those defendants also filed a request for judicial notice. Docket no. 37-
14 1. Those defendants asked the Court to take judicial notice of a January 8, 2014 order
15 by the Riverside County Superior Court, in case number RIC 1216945, declaring Paul
16 Hupp a vexatious litigant in that court. Docket no. 37-1 at 2; *see* docket no. 37-2, Ex.
17 C. Defendants also asked the Court to take judicial notice of the California Court of
18 Appeal's March 7, 2014 decision, in case number E060463, denying Paul Hupp's
19 appeal of that vexatious litigant order. Docket no. 37-1 at 2; *see* docket no. 37-2,
20 Ex. D.

21 On March 24, 2016, one day before the Solera defendants filed their motion to
22 dismiss, a group of non-Solera defendants also filed a motion to dismiss plaintiffs'
23 complaint, accompanied by their own request for judicial notice. Docket nos. 29, 30.
24 Those defendants also asked the Court to take judicial notice of the Riverside County
25 Superior Court order declaring Paul Hupp a vexatious litigant. Docket no. 30 at 3,
26 Ex. 3. In addition, defendants sought judicial notice of the following documents,
27 among others: (1) a first amended complaint filed by plaintiff Aristeia Hupp on January
28 12, 2016 in Riverside County Superior Court, *Aristeia Hupp v. Solera Oak Valley*

1 *Greens Ass'n, et al.*, case number RIC 1512779 (docket no. 30 at 4, Ex. 9) (“the state
2 court action”); (2) a notice of vexatious litigant order filed in the state court action on
3 January 26, 2016 (docket no. 30 at 4, Ex. 10); (3) a February 10, 2016 Riverside
4 County Superior Court minute order granting an ex parte application for dismissal of
5 the first amended complaint in the state court action (docket no. 30 at 4, Ex. 13); and
6 (4) a March 9, 2016 Riverside County Superior Court notice of entry of judgment
7 dismissing the state court action (docket no. 30 at 4, Ex. 15). The Court takes judicial
8 notice of the court records from these state court proceedings, as stated above in the
9 discussion of the second *De Long* factor. *See* Fed. R. Evid. 201; *see also Holder*, 305
10 F.3d at 866; *U. S. ex rel. Robinson Rancheria Citizens Council*, 971 F.2d at 248.

11 Regarding these judicially noticed filings from Aristeia Hupp’s underlying state
12 court action, the Court notes the January 26, 2016 notice of vexatious litigant order
13 alleges – and the first amended complaint in that case shows – that Paul Hupp removed
14 his name from the caption in the January 12, 2016 first amended complaint, but
15 nonetheless listed himself as a party on the second page of that complaint. Docket no.
16 30, Exs. 9, 10. That first amended complaint proceeds to include numerous factual
17 allegations concerning Paul Hupp in addition to Aristeia Hupp. *Id.* Accordingly, the
18 Riverside County Superior Court granted an ex parte application to dismiss the first
19 amended complaint, under the vexatious litigant rule. *See* docket no. 30-2, Ex. 13.
20 Although the Superior Court had declared only Paul Hupp to be a vexatious litigant,
21 and although Aristeia Hupp was the only named plaintiff in the dismissed case, it was
22 apparent Paul Hupp was attempting to evade his status as a vexatious litigant.

23 The Court also takes judicial notice of the 11 lawsuits Paul Hupp has filed in the
24 Southern District of California, and in particular *Paul Hupp v. San Diego Cty. Dist.*
25 *Att’y, et al.*, No. 3:12-CV-492-IEG (RBB) (S.D. Cal.). *See* Exhibit A. There, the
26 United States District Court for the Southern District of California took judicial notice
27 of the following facts: (1) on November 15, 2010, the San Diego Superior Court
28 entered a three-year restraining order against Hupp ordering him not to contact or

1 harass an administrative law judge; and (2) on November 16, 2011, Hupp was found
2 guilty of violating the restraining order and sentenced to 25 days in custody and a
3 \$5,000 fine. *Paul Hupp v. San Diego Cty. Dist. Att’y, et al.*, No. 3:12-CV-492-IEG
4 (RBB) (S.D. Cal.), docket no. 35 at 2-3; *id.*, docket no. 26-2, Exs. D-E; *id.*, docket no.
5 24-3, Ex. B.

6 Moreover, as mentioned above, this Court has already imposed two pre-filing
7 screening orders on Paul Hupp, in 2009 and again in 2010. *See Paul Hupp v. U.S.*
8 *Dep’t of Educ., et al.*, No. CV 09-2052-PA (AGR), docket no. 28; *Paul Hupp v. Vicki*
9 *Kurpinsky, et al.*, No. ED CV 10-413-UA (RC), docket no. 20.

10 In total, Paul Hupp has been declared a vexatious litigant once in Riverside
11 County Superior Court and twice in the Central District of California, and has been
12 subjected to a restraining order in the San Diego County Superior Court. This Court is
13 most troubled by the steps Hupp has taken to evade or even disregard those orders. As
14 noted, in 2011, Hupp was sentenced to 25 days in custody for violating the San Diego
15 Superior Court restraining order. And as also noted, it was as recently as January 2016
16 that Hupp attempted to evade his status as a vexatious litigant in Riverside County
17 Superior Court by filing a complaint that only listed his mother in the party caption,
18 despite referencing himself as a party elsewhere in the complaint and including factual
19 allegations that concerned him.

20 Moreover, since Paul Hupp was declared a vexatious litigant in Riverside
21 Superior Court in January 2014, Paul Hupp and sometimes Aristeia Hupp have turned
22 to this federal Court to file what appear to be state court matters. For example, both
23 plaintiffs sued the Solera defendants for largely state court violations in case number
24 ED CV 15-1693, including only two federal claims that, as the court noted, appeared to
25 be asserted “solely for the purpose of obtaining [federal] jurisdiction, given the
26 obvious infirmities of those claims.” *See Paul Hupp, et al. v. Solera Oak Valley*
27 *Greens Ass’n*, No. ED CV 15-1693-VAP (SP), docket no. 5 at 8. The Court ultimately
28 dismissed the case for inability to state a federal claim, since neither plaintiffs’ civil

1 rights claim under 42 U.S.C. § 1983 nor their Fair Debt Collection Practices Act claim
2 under 15 U.S.C. §§ 1692, et seq. could succeed given that none of the defendants were
3 state actors or debt collectors. Plaintiffs then sued the Solera defendants and others in
4 the instant case, raising many of the same claims and many others, but again – as in
5 case number ED CV 15-1693 – raising only defective federal claims that appeared to
6 serve no purpose other than to try to manufacture a basis for federal jurisdiction.

7 Plaintiffs have also, unsuccessfully, tried to use this Court to challenge the
8 decisions and courtroom procedures of Superior Court judges in small claims and
9 infraction cases. Plaintiffs each separately brought civil rights actions against Superior
10 Court judges that were dismissed due to judicial immunity and similar deficiencies.
11 *See Aristeo Hupp v. Samuel Diaz, Jr., et al.*, No. ED CV 14-2559-VAP (SP); *Paul*
12 *Hupp v. Mark Edward Petersen, et al.*, No. ED CV 15-1247-VAP (SP). And Paul
13 Hupp's four habeas petitions sought to challenge his Superior Court convictions for
14 speeding and having dogs at large, although he was never in custody as required for
15 habeas jurisdiction. *See Paul Hupp v. Riverside Cty. Super. Ct., et al.*, Nos. ED CV
16 15-1266-VAP (SP), ED CV 15-1268-VAP (SP), ED CV 15-1879-VAP (SP), ED CV
17 15-2485-VAP (SP). Thus, as Paul Hupp's history of vexatious litigation in state court
18 ultimately led the Riverside County Superior Court to block his access to that court, he
19 has increasingly turned to this Court to both challenge the Superior Court and raise
20 matters that have no place in federal court.

21 Accordingly, the Court finds Paul Hupp's history of litigation has been
22 vexatious, harassing, and duplicative under the first *Safir* factor. *See Safir*, 792 F.2d at
23 24.

24 **2. The Four Remaining *Safir* Factors**

25 While the Court believes Paul Hupp's litigation history most supports a finding
26 of frivolous or harassing litigation for purposes of the *De Long* analysis, the remaining
27 four factors under *Safir* are also relevant here. Regarding the second *Safir* factor of
28 whether the litigant has an objective and good faith expectation of prevailing, the

1 Court finds the volume and repetitive nature of plaintiffs' filings – many of which, as
2 discussed, had no legitimate basis for federal jurisdiction – demonstrate a motive to
3 harass both the various defendants named in their actions, as well as the Court.

4 Plaintiffs are not represented by counsel for purposes of the third *Safir* factor.
5 The Ninth Circuit has recognized that pre-filing orders to curb access to courts should
6 be done with care where a pro se litigant is involved, yet also recognizes that courts are
7 free to enjoin litigants with “abusive and lengthy histories,” as is the case here. *See De*
8 *Long*, 912 F.2d at 1147. Moreover, the Court has noted previously that Paul Hupp,
9 although not a practicing attorney, is a law school graduate. *See Paul Hupp v. City of*
10 *Walnut Creek*, 389 F. Supp. 2d 1229, 1232 n.5 (N.D. Cal. 2005); *see also Paul Hupp v.*
11 *Terrance R. Hubbs, et al.*, No. ED CV 14-2560-VAP (SP), docket no. 66 at 5. Thus,
12 the Court has questioned whether Paul Hupp is entitled to the leniency afforded to
13 those unskilled in the law for purposes of the pleading requirements of Federal Rule of
14 Civil Procedure 8(a)(2). *See Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987)
15 (discussing liberal construction given to “inartful pleading” of pro se litigants, who are
16 “[p]resumably unskilled in the law”) (citations omitted). The Court recognizes,
17 however, that Aristeia Hupp is not an attorney or law school graduate.

18 The fourth *Safir* factor speaks directly to the factual scenario currently before
19 the Court here: though relatively low in number, plaintiffs' filings in this district have
20 imposed substantial costs upon the various defendants – many of whom are public
21 entities – and the Court, both in terms of time and money. *See Steinhart v. Barkela*,
22 2013 WL 3814330, at *3 (N.D. Cal. July 19, 2013) (considering the fact that one of the
23 defendants subjected to vexatious litigation was a public entity when analyzing
24 substantive findings of frivolousness or harassment under *De Long*). And as for the
25 fifth factor, in light of Paul Hupp's demonstrated evasion of previous vexatious litigant
26 and restraining orders – including apparently using his mother as a plaintiff to raise his
27 own grievances – the Court doubts whether sanctions other than a vexatious litigant
28 order against both plaintiffs “would be adequate to protect the courts and other parties”

1 under the fifth *Safir* factor. *See Safir*, 792 F.2d at 24.

2 On the basis of this record, then, the Court concludes plaintiffs have “abused the
3 court’s process and [are] likely to continue such abuse, unless protective measures are
4 taken.” Local Rule 83-8.3. Accordingly, plaintiffs’ filings in this district satisfy the
5 third *De Long* factor.

6 **D. Plaintiffs’ Objections to the Record**

7 Most of plaintiffs’ objections in the OSC Response can be characterized as
8 objections to the Court’s compilation of a record for review, for purposes of the second
9 *De Long* factor, and to the Court’s substantive findings of frivolousness under the third
10 *De Long* factor. In particular, plaintiffs contend the Court erred by: (1) including Paul
11 Hupp’s habeas corpus petitions within its record for review (OSC Response at 3, 6, 9,
12 14, 18); (2) including within its record for review cases that are currently on appeal,
13 because they are not final rulings on the merits (*id.* at 4, 6, 14, 16, 18); (3) both
14 including within its record for review, and using as a basis for findings of
15 frivolousness, any proceedings that were already the subject of a request for judicial
16 notice in a Paul Hupp lawsuit from the Southern District of California (*id.* at 4, 5, 15-
17 16); and (4) improperly taking judicial notice of both state and federal court
18 proceedings (*id.* at 9-11, 16). The Court will address each of these contentions below.

19 **1. Habeas Corpus Petitions**

20 In the OSC Response, plaintiffs argue the Court’s record for review contains
21 legal and factual errors, for purposes of the second *De Long* factor and as outlined in
22 Exhibits A and B to the OSC, because the habeas corpus petitions included therein “are
23 not ‘lawsuits.’” OSC Response at 3. Plaintiffs argue “having a *Habeas Corpus*
24 *Petition* denied is not a factor that can support a ‘vexatious litigant’ finding.” *Id.* at 18.

25 Though plaintiffs’ arguments are unsupported by any statutory authority or case
26 law, the Court notes the vexatious litigant requirements under California law prevent
27 courts from considering habeas corpus petitions when developing a litigation history to
28 support a finding of vexatiousness. *In re Bittaker*, 55 Cal. App. 4th 1004, 1012, 64

1 Cal. Rptr. 2d 679 (1997) (“A petition for writ of habeas corpus is not a civil action or
2 proceeding within the meaning of the vexatious litigant statute.”); *see* Cal. Code Civ.
3 Proc. §§ 391(b)(1)-(4). But this Court does not derive its authority to declare plaintiffs
4 vexatious litigants from California law, but rather from the “inherent power to enter
5 pre-filing orders against vexatious litigants” under the All Writs Act. *See Molski*, 500
6 F.3d at 1057 (citing 28 U.S.C. § 1651(a)). In determining whether plaintiffs qualify as
7 vexatious litigants, the Local Rules authorize, but do not require, this Court to look to
8 California’s vexatious litigant statute for guidance. Indeed, Local Rule 83-8.4 states:
9 “Although nothing in this rule shall be construed to require that such a procedure be
10 followed, the Court may, at its discretion, proceed by reference to the Vexatious
11 Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391-391.8.”

12 The Court’s May 17, 2016 OSC made clear that the Court’s determination that
13 plaintiffs should be deemed vexatious litigants was not made under the California
14 vexatious litigant statute, but rather its inherent authority under the All Writs Act and
15 an analysis of the *De Long* factors as required by relevant Ninth Circuit precedent.
16 OSC at 3-4. Plaintiffs appear to recognize the Court’s stated source of authority
17 elsewhere in their OSC Response, where they discuss the different standards for a
18 finding of vexatiousness between California and federal courts, and even state “federal
19 law is diametrically opposite of state law” and the relevant California vexatious litigant
20 statutes. OSC Response at 8.

21 Moreover, federal courts in this and other districts in California have declared
22 litigants vexatious based in whole or in part on a litigation history involving habeas
23 corpus petitions. *See Gray v. People of California*, 2014 WL 1325312, at *5 (C.D.
24 Cal. 2014); *Olagues v. Marin Dist. Att’y*, 2014 WL 3704918, at *6 (N.D. Cal. July 23,
25 2014); *Galeska v. Duncan*, 894 F. Supp. 1375, 1381 (C.D. Cal. 1995) (citing
26 *O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990)). Plaintiffs provide no authority
27 to the contrary. As such, it is not error for the Court to include Paul Hupp’s several
28 habeas corpus petitions within its record for review for purposes of the second *De*

1 Long factor. And it is particularly appropriate that the habeas petitions be considered
2 in this case since, as discussed above, they are part of plaintiffs' increasing practice of
3 improperly seeking to use this Court to challenge decisions adverse to them in the
4 Superior Court.

5 **2. Cases Currently on Appeal**

6 In their OSC Response, plaintiffs also contend the Court erred by including
7 within its record for review any cases plaintiffs have subsequently appealed to the
8 Ninth Circuit, appearing to argue these cases are not final rulings on their merits and
9 therefore improperly included within the scope of the OSC. See OSC Response at 4, 6,
10 14, 16, 18. But other district courts within the Ninth Circuit have declared litigants
11 vexatious based on a litigation history that contained cases still on appeal. *Rygg v.*
12 *Hulbert*, 2014 WL 5023627, at *1-2, 5 (W.D. Wash. 2014); *Scott v. Weinberg*, 2007
13 WL 963990, at *2 (W.D. Wash. 2007). Courts have made similar rulings while cases
14 within its record for review are pending before a district court. *Ingram v. City of*
15 *Sacramento*, 2013 WL 1403055, at *2 n.3 (E.D. Cal. 2013); *Walker v. Stanton*, 2008
16 WL 4401388, at *8, 10 n.5 (C.D. Cal. 2008). Plaintiffs provide no support for the
17 contention that cases pending on appeal before the Ninth Circuit cannot form the basis
18 for a finding of vexatiousness.

19 Plaintiffs also appear to argue the Court cannot base its finding of vexatiousness
20 on cases that involved claims over which the Court declined to exercise supplemental
21 jurisdiction, because there has not yet been a final ruling on the merits of those claims.
22 See OSC Response at 4, 18. "Final judgment on the merits is synonymous with
23 dismissal with prejudice." *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d
24 683, 686 (9th Cir. 2005) (internal quotations and citations omitted). As stated in the
25 OSC, at least eight of Paul Hupp's civil actions were dismissed either with prejudice or
26 without leave to amend. OSC at 6; see OSC, Ex. B.

27 Courts have based a finding of vexatiousness on a litigation history comprised in
28 part of cases dismissed with prejudice or without leave to amend, including dismissals

1 for lack of subject matter jurisdiction where the court plainly determines a plaintiff's
2 case lacks substantive merit. For example, in *Martin v. Redwood City Dental Care*,
3 2015 WL 94898982 (N.D. Cal. 2015), the court declared the plaintiff a vexatious
4 litigant based on a record for review containing nine complaints dismissed for naming
5 defendants immune from suit, for failing to state a claim, or for lack of jurisdiction. *Id.*
6 at *2. Included within that litigation history was a complaint dismissed with prejudice
7 for failing to state a cognizable claim under § 1983, as the allegations were brought
8 against a corporation defendant and involved “purely private conduct.” *Id.* at *3.
9 Above and in the OSC, the Court has explained how plaintiffs’ claims against the
10 Solera defendants have failed on multiple occasions for the same reasons, in part
11 because plaintiffs failed to adequately allege state action against those defendants.
12 *See* OSC at 10.

13 Moreover, to the extent plaintiffs allege the Court cannot base a finding of
14 vexatiousness on cases that may later be decided in plaintiffs’ favor, the Court
15 reiterates that the focus under federal law is on the number of suits that were frivolous
16 or harassing in nature, rather than on the number of suits that were simply adversely
17 decided. *Molski*, 500 F.3d at 1061; *De Long*, 912 F.2d at 1147-48. Above and in the
18 OSC, the Court has detailed the wide range of Paul Hupp’s frivolous and harassing
19 actions, both with and without the involvement of Aristeia Hupp, including certain
20 cases that settled favorably to Paul Hupp or partially survived a motion to dismiss.
21 *See* OSC at 6-11. Plaintiffs’ arguments fail to show the Court erred when it considered
22 portions of Paul Hupp’s litigation history that are still pending resolution in this Court,
23 on appeal to the Ninth Circuit, or were dismissed without prejudice.

24 **3. Cases Included Within a Previous Request for Judicial Notice**

25 In the OSC Response, plaintiffs also claim the Court erred by considering any
26 proceedings that were already the subject of a request for judicial notice in Paul
27 Hupp’s lawsuit from the Southern District of California, *Paul Hupp v. San Diego Cty.*
28 *Dist. Att’y, et al.*, No. 3:12-CV-492-IEG (RBB) (S.D. Cal. 2012) (the “Southern

1 District case”), in its analysis of the second and third *De Long* factors. OSC Response
2 at 4, 5, 15-16. Plaintiffs claim this Court is currently “bringing as an OSC” the “exact
3 same ‘vexatious litigant’ motion” filed in April 2012 against Paul Hupp in the
4 Southern District case. *Id.* at 4. According to plaintiffs, because the court in the
5 Southern District case refused to find Hupp was a vexatious litigant, this Court is
6 barred by issue and claim preclusion from “re-litigating” those cases cited in the April
7 2012 motion. *Id.* at 5.

8 In its OSC and above, the Court took judicial notice of the 11 lawsuits Paul
9 Hupp has filed in the Southern District of California, including the Southern District
10 case to which plaintiffs refer in their OSC Response. In the OSC Response, plaintiffs
11 cite to a motion to dismiss Paul Hupp’s first amended complaint in the Southern
12 District case, accompanied by a corresponding request for judicial notice, filed by the
13 defendants in that case. OSC Response at 4; Southern District case, docket no. 24.
14 The defendants requested the court take judicial notice of several exhibits, including
15 the two orders from the Central District of California declaring Paul Hupp a vexatious
16 litigant. Southern District case, docket no. 24-2 at 3; *see Paul Hupp v. U.S. Dep’t of*
17 *Educ., et al.*, No. CV 09-2052-PA (AGR), docket no. 28; *Paul Hupp v. Vicki*
18 *Kurpinsky, et al.*, No. ED CV 10-413-UA (RC), docket no. 20.

19 On June 4, 2012, the court in the Southern District case issued an order granting
20 the motion to dismiss, which plaintiffs also cite in the OSC Response. Southern
21 District case, docket no. 35; *see* OSC Response at 4. In a footnote in that order, the
22 court took judicial notice of the requested documents, including the two Central
23 District orders. Southern District case, docket no. 35 at 2 n.1. In doing so, the court
24 noted the documents were appropriate for judicial notice because they were matters of
25 public record, but clarified that the court was taking judicial notice only of the
26 existence of these documents and the statements made therein, not the truth of their
27 contents. *Id.*

28 As far as this Court can tell, plaintiffs argue this footnoted statement from the

1 court in the Southern District case demonstrates the court “denied making a finding of
2 fact that [Paul Hupp was] a ‘vexatious litigant.’” OSC Response at 5. Thus, plaintiffs
3 claim it is now “settled law” that none of the cases cited by the Court in its OSC prior
4 to June 4, 2012 can be used to support a finding of vexatiousness under the doctrines
5 of issue and claim preclusion. *Id.* This misconstrues the record of what occurred in
6 the Southern District case.

7 This Court need not address whether a court’s denial of a motion to declare a
8 litigant vexatious would have any preclusive effect in a later vexatious litigant motion,
9 because plaintiffs are simply incorrect that there was any such denial or finding in the
10 Southern District case. In fact, no motion was brought in the Southern District case to
11 declare Paul Hupp a vexatious litigant. Plaintiffs wrongly construe the Southern
12 District case defendants’ request for judicial notice of prior vexatious litigant orders
13 entered against Paul Hupp as a formal motion to declare Hupp a vexatious litigant in
14 that case. The court in the Southern District case took judicial notice of the requested
15 documents, all of which were documents from either state or federal court, to assist in
16 the court’s resolution of the pending motions to dismiss. Southern District case,
17 docket no. 24-2; *see id.*, docket no. 35 at 5-14. The court there also found the
18 documents properly subject to judicial notice for the purpose of presenting the
19 procedural history of that matter. *Id.*, docket no. 35 at 2-4.

20 But by taking judicial notice of certain documents, the court in the Southern
21 District case neither found, nor refused to find, that Paul Hupp was a vexatious litigant.
22 Nowhere in the June 4, 2012 order granting the motion to dismiss does the court in the
23 Southern District case make any ruling on Paul Hupp’s status as a vexatious litigant.
24 Nor could any such finding be implied or intended from statements in which the court
25 there provided citations to case law detailing the appropriate scope for taking judicial
26 notice of certain documents. *Id.*, docket no. 35 at 2 n.1; *see* OSC Response at 4. Thus,
27 plaintiffs’ objection that the Court is foreclosed from using a portion of Paul Hupp’s
28 litigation history, for purposes of the second and third *De Long* factors, is without

1 merit.

2 **4. Improper Judicial Notice**

3 In their OSC Response, plaintiffs further contend the Court improperly took
4 judicial notice in its OSC of certain Riverside County Superior Court records related to
5 the allegations of plaintiffs' underlying complaint. OSC Response at 9-11, 16-17.
6 They claim the Court erred by judicially noticing "papers that cannot receive 'judicial
7 notice' without an opportunity to be heard on their validity and reliability." *Id.* at 10.
8 Plaintiffs also argue they have had no "opportunity whatsoever to address any paper by
9 any defendant that has been filed in this action," and that the OSC improperly cites to
10 "unidentified and unknown papers from the various defendants without giving
11 Plaintiffs the opportunity to object to them." *Id.* at 9, 10-11.

12 The OSC Response is in fact plaintiffs' fourth time addressing various
13 allegations arising from this underlying state court action. In their complaint, plaintiffs
14 initially brought various facial and as-applied challenges to Paul Hupp's status as a
15 vexatious litigant in state court, which the Court addressed in its March 28, 2016 order
16 denying plaintiffs' motion for a temporary restraining order and preliminary
17 injunction, and ordering plaintiffs to show cause why the complaint should not be
18 dismissed for lack of subject matter jurisdiction. *See* Compl. at 93-99; docket no. 40 at
19 13-14.

20 Plaintiffs continued to assert these allegations in their April 27, 2016 response to
21 that order, which the Court again addressed in its May 13, 2016 order dismissing the
22 complaint without leave to amend. *See* docket no. 48 at 3; docket no. 49 at 6-9.
23 Plaintiffs next filed a request for reconsideration under Rules 52 and 60 of the Federal
24 Rules of Civil Procedure, where they again raised their constitutional challenges to the
25 California "vexatious litigant" statute and various proceedings in underlying state court
26 actions. Docket no. 54 at 3-5. On all occasions, the Court considered and rejected
27 these arguments, and found plaintiffs failed to state viable claims under 42 U.S.C. §
28 1983 that this Court has jurisdiction to consider.

1 To the extent plaintiffs argue they are entitled to a hearing before this Court to
2 address various factual and legal errors present in these underlying state court
3 proceedings, plaintiffs' objection to judicial notice of certain records from the
4 Riverside County Superior Court is not well-taken on its merits. Despite plaintiffs'
5 continued challenge to these state court proceedings, plaintiffs offer only conclusory
6 claims and have presented no new law or facts that could not have been previously
7 known by plaintiffs, nor have plaintiffs shown the Court committed legal error or
8 failed to consider any facts previously presented.

9 Thus, plaintiffs' arguments in the OSC Response do not alter the Court's
10 conclusion that the record for review as set forth in the OSC and herein, and the
11 findings of frivolousness contained therein, are sufficient to satisfy the second and
12 third *De Long* factors.

13 **E. Pre-Filing Order**

14 Pre-filing orders "must be narrowly tailored to the vexatious litigant's wrongful
15 behavior." *Molski*, 500 F.3d at 1061. In *De Long*, for example, the Ninth Circuit held
16 that requiring a vexatious litigant to obtain leave of court to file any action was
17 overbroad, where the litigant's misconduct had involved filing three habeas petitions
18 and a Rule 60(b) motion. *De Long*, 912 F.2d at 1146, 1148. Similarly, in *Moy v. U.S.*,
19 906 F.2d 467 (9th Cir. 1990), the Ninth Circuit found overbroad an order that all suits
20 brought by the vexatious litigant be subject to pre-filing review, even though the
21 conduct leading to the order had concerned only one group of defendants. *Moy*, 906
22 F.2d at 469. The court noted "[t]here is no evidence on this record that [the litigant] has
23 a general history of litigious filing." *Id.* at 471.

24 On the other hand, the Ninth Circuit has approved broader pre-filing orders
25 against litigants who have a history of filing a wide variety of frivolous actions. In
26 *Franklin v. Murphy*, 745 F.2d 1221 (9th Cir. 1984), the litigant was a prisoner who had
27 filed over 20 actions against various defendants. *Franklin*, 745 F.2d at 1229. The
28 district court entered an order limiting the plaintiff to six actions filed in forma

1 pauperis per year. *Id.* at 1232. The Ninth Circuit affirmed this order, with the added
2 qualification that the litigant could file additional actions in forma pauperis if he first
3 sought leave of court. *Id.*

4 Here, the wide range of actions plaintiffs have filed in this district and
5 elsewhere, in addition to Paul Hupp's demonstrated disregard for previous court orders
6 aimed at restraining his harassing conduct, makes it impracticable to tailor a pre-filing
7 order to a specific group of defendants or type of legal claim. In their OSC Response,
8 plaintiffs take issue with the breadth of the OSC's proposed pre-filing order. They
9 argue the two previous vexatious litigant orders entered against plaintiff Paul Hupp in
10 the Central District of California are appropriately "narrowly tailored," while the scope
11 of the pre-filing order here instead relies on cases "so far removed from the OSC that
12 one can easily presume [the OSC] is just pretext to stop [Paul Hupp] from filing
13 actions" against the "friends" and "people who are politically connected to both" the
14 Magistrate Judge and District Judge in this case. OSC Response at 3. In addition to
15 being both nonsensical and unsupported, this statement fails to address the ultimate
16 ineffectiveness of the previous vexatious litigant orders against Paul Hupp in this
17 district. Both of the previous pre-filing orders by this Court restricted Paul Hupp's
18 filings against specific groups of defendants, only for him to continue a similar pattern
19 of litigation against other groups of defendants, as outlined in Exhibit B. *See Paul*
20 *Hupp v. U.S. Dep't of Educ., et al.*, No. CV 09-2052-PA (AGR), docket no. 28; *Paul*
21 *Hupp v. Vicki Kurpinsky, et al.*, No. ED CV 10-413-UA (RC), docket no. 20; *see also*
22 *Exhibit B.*

23 The Court doubts Paul Hupp would cease to exploit any avenue for frivolous
24 litigation left open to him if he was subjected to a third vexatious litigant order in this
25 district with a similar scope. Under the circumstances, an order requiring plaintiffs to
26 obtain leave of court before filing any future complaint, petition, or in forma pauperis
27 application is an appropriate and reasonably tailored course of action. *See Gray*, 2014
28 WL 1325312, at *7; *see also Hurt*, 2013 WL 144047, at *8.

1 The Court also finds it appropriate that this pre-filing order include Aristeia
2 Hupp, given Paul Hupp's willingness to use his mother's name as a means of evading
3 his own status as a vexatious litigant in other courts in order to continue filing actions
4 there. *See Gavin v. City & Cty. of San Francisco*, 2016 WL 126937, at *1-2 (N.D. Cal.
5 Jan. 12, 2016) (including suits filed by the litigant "and/or her son" in the record for
6 review under the second *De Long* factor). In *Ringgold-Lockhart*, the Ninth Circuit
7 vacated a vexatious litigant order entered against an attorney and her son in part
8 because the district court "erred by holding [the attorney's] state litigation against [her
9 son], without a record indicating that he participated in that litigation." *Id.* The record
10 here is otherwise.

11 Here, the Court has judicially noticed a portion of Paul Hupp's state court
12 litigation history that shows at least some participation from Aristeia Hupp in
13 furtherance of Paul Hupp's attempt to continue filing actions in Riverside County
14 Superior Court despite his status as a vexatious litigant there. In the February 10, 2016
15 Riverside County Superior Court minute order granting an ex parte application for
16 dismissal of the first amended complaint in the Hupps' most recent state court action,
17 the Superior Court judge notes Aristeia Hupp left a voicemail stating her objection to
18 the ex parte application. *See* docket no. 30 at 4, Ex. 13. She is also a plaintiff in four
19 of the actions brought in this Court, as listed on Exhibit B. Though the extent of
20 Aristeia Hupp's documented involvement in Paul Hupp's litigation history is small
21 beyond the repeated appearance of her name as a party to various actions, Paul Hupp
22 has nonetheless already attempted to use his mother as an avenue of continued
23 litigation despite an order declaring him a vexatious litigant. Thus, the Court is
24 concerned Paul Hupp would engage in similar tactics here should Aristeia Hupp remain
25 outside the scope of such an order.

26 Plaintiffs argue including Aristeia Hupp in the order constitutes a "mind
27 boggling abuse of power." OSC Response at 19. But in the OSC Response, plaintiffs
28 acknowledge Paul Hupp sought "to be a co-plaintiff with [Aristeia Hupp] in the state

1 court action that is the subject of this federal action,” but appear to argue Paul Hupp
2 was not dismissed from that state court action pursuant to the order in that court
3 declaring him a vexatious litigant, but rather because the state court judge “simply
4 refused to allow [Paul Hupp] to be a litigant,” in violation of his constitutional rights.
5 *Id.* at 10. As stated above, the Court has considered and discussed plaintiffs’
6 constitutional challenges to various underlying state court proceedings on several
7 occasions. In the OSC Response, plaintiffs do not address Aristeia Hupp’s
8 participation in this case, nor do they address Paul Hupp’s deliberate attempt to use
9 Aristeia Hupp as a way to continue his litigation in state court despite his status as a
10 vexatious litigant there, other than to again assert many of those constitutional
11 challenges already addressed by the Court. *See* OSC Response at 5, 7-8, 19. Thus, the
12 OSC Response has not allayed the Court’s concern that excluding Aristeia Hupp from
13 the pre-filing order would render it ineffective.

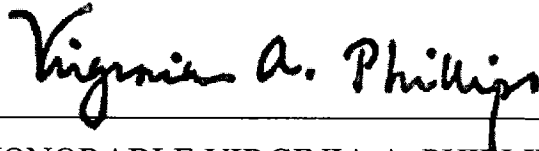
14 Here, as Paul Hupp’s litigation history shows, he is more than merely a prolific
15 litigant; rather, he has demonstrated a pattern of filing harassing and frivolous lawsuits
16 against a variety of defendants. The Court concludes Paul Hupp has abused the
17 Court’s process, both with and without the use of Aristeia Hupp, and is likely to
18 continue abusing the system unless protective measures are taken against both him and
19 Aristeia Hupp. Thus, an order preventing plaintiffs from filing any future pro se
20 complaints or petitions against any defendants, without Court permission, is
21 appropriate in this situation. *See De Long*, 912 F.2d at 1147; *Hurt v. All Sweepstakes*
22 *Contests*, 2013 WL 144047, at *8 (N.D. Cal. 2013) (declaring the plaintiff a vexatious
23 litigant and subjecting all future lawsuits to a pre-filing restriction).

III.

CONCLUSION

IT IS THEREFORE ORDERED that plaintiffs Paul Hupp and Aristea Hupp are hereby declared vexatious litigants. The Clerk of the Court shall no longer accept for filing any further motions and/or requests for relief in this action, or any pro se complaint or petition or other case-initiating document from either plaintiff, unless the filing plaintiff(s) have filed a Motion for Leave to File and a Judge or Magistrate Judge of this Court has granted leave for plaintiff(s) to file the document.

DATED: August 16, 2016



HONORABLE VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

Presented by:



Sheri Pym
United States Magistrate Judge